

**SS-8 Determination—Determination for Public Inspection**

Occupation 06AAS.31 Aide/Assistant	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

Information provided indicates the firm is a worldwide airline medical transportation company. The firm has reported the income on Form 1099-MISC consistently for tax years 2012 through 2014.

The worker performed services as a PRN Flight Nurse Escorts. The firm feels they are independent contractors as their services are performed on an as needed basis. Most hold full time hospital jobs. Work is not guaranteed, and they have a right to refuse any job offer. The firm indicated the contractors are required to obtain and maintain their training and certifications such as ACLS, BLS air flight course. This is not provided nor paid for by the firm. They are called when there is a flight available, if they refuse the firm contacts the next name on the list. The escort assigned to the mission is responsible for resolving any issues during the flight. Nursing notes on each patient are required. The firm has quarterly meetings, but it is not mandatory for them to attend and there are no penalties for not attending. He was to perform his services personally. The firm provided the oxygen machine shared by other escorts. The worker provides his/her own medical bags. The firm pays for flights, hotels, transportation and reimburses the contractor for meals. They are paid a daily rate for the length of the assignment. The firm stated the malpractice would be the worker's responsibility. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as a contractor representing the firm. The worker sent an e-mail stating he did not wish to take anymore assignments.

-The firm provided copies of the company forms utilized per trip such as, patient assessment, Flight summary and flow sheet, patient narrative forms. W-9 signed by worker in 2012. Invalid POA 2848 Form. 1099-MISC documents issued. Copies of Workers certificate of insurance form, which stated he was self-employed, full time. This was valid from 1.2013 to 1.2015. Contractor medical statement. And Independent contractor confidentiality, non-compete and non-solicitation agreement.

The worker states he feels he is an employee because services are performed according to the company's verbal instructions by the chief flight nurse, program director, president and the company's policies and procedures and orientation manuals. The workers are required to wear [REDACTED] logo polo shirts and prescribed uniform along with company identification badges. The forms provided by the firm refer to the escorts as employees. The escorts are offered a chance to join the company's AFLAC supplemental insurance plan and is given annual travel insurance to accommodate their accreditation requirements with CAMTS. The worker agrees services are performed on an on call status, dependent on the escorts availability. There is no set schedule it is determined by the length of each trip. He performed services on a part time basis. He agreed he was paid on a daily basis and out of pocket expenses were reimbursed by the firm. The worker stated the firm provided medical bags with supplies and medications to all escorts. They also provided a portable oxygen concentrator. Either party could terminate the work relationship without incurring a penalty or liability. The worker stated, and provided various documents, where the company referred to him as their employee. The various forms, provided by both firm and worker, indicate the escorts are referred to as employees.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

## Analysis

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. See Rev. Rul. 74-389, 1974-2 C.B. 330.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. See Rev. Rul. 55-144, 1955-1 C.B. 483.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. See Rev. Rul. 71-524, 1971-2 C.B. 346.

## ANALYSIS

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business. The firm on more than one occasion represented the worker as an employee of the firm. The fact the workers are required to follow the policies, procedures and orientation manual, indicates direction and control. The firm required and schedule training sessions they or the CMTS required their personnel to have in order the firm to be compliant. The firm dictated how patient forms and travel forms were to be completed again in order for them to be compliant, to reviews given in deficiencies. The worker(s) was paid a set daily rate, determined by the firm, and paid for travel and out of pocket expenses incurred. All work was performed under the firm's name as a representative of the firm. Services were performed on a continuing basis.