
SS-8 Determination—Determination for Public Inspection

Occupation

AAS - Aides / Assistants

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:**Facts of Case**

The worker is seeking a determination of worker classification for services performed for the firm as a medical assistant from September 2025 until December 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker believes that they were an employee of the firm because they were assigned to work following a specific schedule, the work was their primary and only source of income, and a school assigned the worker to perform services for the firm as part of an externship before they were offered a full-time position from the firm. The worker attached a copy of a job offer confirmation letter to their request.

The firm states that they provide healthcare and wellness services to patients and clients. The worker provided healthcare and wellness support services to the firm's patients and clients at the firm's premises and directed by the firm. The firm classified the worker as an independent contractor because they performed services on an as-needed basis with flexibility in their schedule. There were no written agreements between the parties.

The firm states that they provided the worker with general orientation regarding the types of services needed and did not provide any formal ongoing training. The worker used their own professional methods and expertise to complete tasks that were assigned in person, over the phone, through email, and through the firm's management. Assignments were communicated to the worker as needed. The firm specified results and not the methods to achieve them. The firm's management would be contacted if the worker encountered any problems or complaints. The firm assumed responsibility for problem resolution. Services were performed at the firm's premises. The worker was required to attend periodic staff meetings and to perform services personally. The worker was not authorized to hire substitutes. The worker states that providers and office managers gave them job assignments in person, over the phone, through email, and through text messages and determined the methods by which job duties were performed. Providers, office managers, and the worker worked together to resolve problems. The firm required the worker to complete patient logs and to perform services as scheduled Monday through Friday from 7am until 3pm at the firm's premises. The firm required the worker to attend staff meetings and to perform services personally. The worker had no hiring authority.

The firm states that they provided the workspace, equipment, and materials. The worker had no significant investment in tools or equipment and did not lease any space, facilities, or equipment. The worker had minimal if any job-related expenses as the firm provided primary resources. The worker did not have an opportunity for significant profit or loss based on the firm's compensation agreement. The firm paid the worker an hourly rate of pay with no access to advance pay. The firm carried worker's compensation insurance on the worker. The firm set the rate of pay for the worker's services. The worker did not suffer a financial loss while working for the firm. The worker states that the firm provided all medical equipment, and the worker did not provide or lease anything. There were no job-related expenses incurred by the worker. Customers paid the firm and the firm paid the worker an hourly rate of pay with no access to advance pay. The worker had no exposure to financial risk or loss. The firm set the rate of pay for services performed.

The firm states that they did not provide any benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not independently advertise services to the general public while engaged by the firm. Services were performed under the firm's name. The worker served the firm's established clients and patients and did not operate independently. The worker states that they did not advertise their services to the public or provide similar services to others. The firm represented the worker to customers as an employee providing services under the firm's name. The worker is still performing services for the firm.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of providing medical services. The firm provided work assignments by virtue of the customers served, required the worker to adhere to a set schedule, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. As stated by both parties, the worker did not incur any job-related expenses or suffer a financial risk in the performance of their job duties. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business of providing healthcare services. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.