

SS-8 Determination—Determination for Public Inspection

Occupation

06MPX Medical Practitioners

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 firm is a dental practice in business to provide dental services to patients. The firm engaged the worker to perform services as an associate dentist. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker attended meetings with the firm's management that provided instructions on methods of delivery of dental care. There were seminars providing updated information regarding services, technology, procedures, and products. The worker provided dental services to the firm's patients, at the firm's location. He was required to perform his services personally. Problems and/or complaints that the worker could not resolve were reported to the firm for resolution purposes. The worker was required to provide standard dental chart notes on a daily basis via computer, and to submit ADA procedure codes in an electronic ledger.

The firm provided the office space, office equipment, tools, and supplies needed to perform the services. The worker provided none of the items needed to perform his services. The worker incurred expenses for workers' compensation insurance, professional liability insurance, and costs associated with the upkeep of licensing. The firm received payment from patients for services rendered. The firm paid the worker on a commission basis, and guaranteed a daily rate as payment for his services. There was no information provided to support that the worker incurred economic loss or financial risks related to the services he performed for the firm.

Employment benefits (aside from unpaid vacation days by advanced request) were not made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to the public, while engaged by the firm. The work relationship was contracted for a set amount of time, with the option of continuation.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's locations. The worker used the firm's facilities, equipment, tools, and supplies and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov