

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Medical Practitioner	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

Information provided finds the firm is an operating medical practice. The worker performed services for the firm from 2013 through 2016. The firm indicated the worker did not have a title, she stated she was patient care coordinator. The firm indicated the work arrangement was that she would work as an independent contractor. The firm stated a contract was signed, but no copy was provided. The firm indicated no training was provided. The worker created her own assignments based on her assessment of the needs of the company. She would resolve issues on her own, but could consult the owner if needed. The firm has indicated no reports were required. The firm indicated she did not have a regular routine or scheduled hours. Toward the end of the work relationship she worked 25% of the time in the office, the other 75% was from home. The firm indicated no meetings were required. She would occasionally ask to meet with the owner if she had specific information to convey.

The firm indicated they provided the computer, office supplies and printer. The worker provided her own equipment for her home office. She also provided her uniform while working in the office, although the firm did not require her to do so. The worker was paid by the hour, and paid for any out of pocket expenses purchased for the firm's office. The customer paid the firm. The firm indicated the level of payment was largely determined by insurance companies.

The firm has indicated no additional benefits were given, she would take days off as often as desired. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she did perform similar services for others. The firm indicated she stopped coming to work, she did not call or write to explain when she would return.

The worker indicated she scheduled appointments, answered phones, did patient check in/out, collected copays, filed insurance claims, performed medical coding and billing, scribed for the doctor, was a liaison between the doctor and lab, took vitals and reviewed symptoms w/patients etc. She stated she was given a generic contract agreement to sign at the beginning of employment. However, she was always referred to as an employee as outline in the firm's operation manual. She submitted hourly timesheets.

The worker has indicated she was provided all training by the firm. She had no prior medical training. All instructions were given verbally or via email from the firm owner. She indicated she was always required to be there during office hours, none to five, or until the last patient left. After her maternity leave, her hours were flexible and centered around work load. She would often work weekends and nights to complete the work load within the firm's given time frame. Services were performed between the firm's two business locations. All meetings were business meetings made by the worker on behalf of the firm. The worker indicated she was required to perform her services personally.

The worker indicated the firm provided all equipment and supplies. She agreed she was reimbursed for out of pocket expenses. She indicated also, she was paid by the hour. The customer paid the firm. She agreed no additional benefits were given. Either party could terminate the work relationship without incurring a penalty or liability. She stated she was a shared employee with the lab and was fired while on maternity leave.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

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.

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. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The work was performed during the firm’s core business hours. The worker had indicated she had no prior medical training, and was trained by the firm. All work assignments were given verbally or via e-mail from the firm, indicating compliance with those instructions was expected.

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. All work was performed on the firm premises, utilizing the firm’s equipment and supplies. The worker was paid by the hour, indicating no opportunity for profit or 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 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. Although there appeared to be a contract signed stating the worker would be an independent contractor, facts provided do not indicate the worker operated a separate business. Work instructions were given directly from the firm. The worker was provided during the firm’s business hours, (for the most part) assisting patients of the firm. The worker was paid by the hour indicating no opportunity for profit or loss. The firm provided the office locations, equipment and supplies.