

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Dental Hygenist	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

The firm is a dental practice. The worker was engaged by the firm as a dental hygienist. The firm reported the worker's remuneration on Form 1099-MISC for 2017. The firm stated that the worker requested to be paid as an independent contractor.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. The firm provided the worker with her work assignments. If problems or complaints occurred, the worker contacted the firm; the firm and worker were responsible for their resolution. The worker determined her own schedule and hours. She performed her services on the firm's premises. The worker was required to perform her services personally.

The firm provided the dental equipment and tools, and the property. The worker utilized her personal instruments. The firm paid the worker according to the invoices she submitted. It did not cover her under workers' compensation. Customers paid the firm directly at prices established by the firm. The worker's risk of loss involved wear and tear, depreciation, and loss or damage of her equipment. Neither party indicated an investment by the worker in the firm or a related business.

The firm did not make benefits available to the worker. The worker performed similar services for others during the same time period. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the firm terminated the work relationship.

Analysis

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. The fact that the worker may have requested to not have employment taxes withheld from her earnings is irrelevant. If an employer-employee relationship exists, the firm is obligated by law to withhold the appropriate employment taxes.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform her services, it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker utilized her personal instruments. 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. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were 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 as a dental hygienist were a necessary and integral part of the firm's dental practice. 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. The worker performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

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.