

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Medical Practitioners	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

The firm is an association contracted to provide physicians to perform services for the association client's pediatric Intensive Care Unit. The firm entered into a contract with the worker a licensed physician to perform the contracted services. The worker had the credentials needed to perform the services so the only training provided by the firm was related to submission of bills for services. The firm assigned worker call schedules based on the client's needs via a goggle calendar. The firm, firm's client and worker determined the methods used to perform the services. The firm required the worker to contact the firm to resolve problems or complaints. The worker was required to provide the firm with work reports on services performed. The worker performed the services during established work schedules at the firm's clients place of business. The firm did not require the worker to attend meetings per the firm and per the worker department meetings were attended. The firm required the worker to perform the services personally. The firm's prior approval was required for worker to hire substitutes or helpers and they disagreed on who paid them.

The firm provided equipment and materials, the worker personal items and the client equipment and materials. The worker did not lease anything. The worker incurred expenses for personal items, malpractice insurance, memberships, and license costs. The firm did not reimburse any worker expenses. The firm paid the worker a set amount per year on a monthly basis. The customer paid the firm. The firm established the level of payment for the services performed by the worker. The firm required the worker to carry professional liability insurance and did not provide workers' compensation insurance.

There was a signed contract entered into between the firm and worker in 2015 and continued until terminated in 2017 by the firm. The firm prohibited the worker from performing similar services for others in the contract. There was a non-compete clause in the signed contract. The worker did not advertise as a business to the public. The firm referred to the worker as a contractor and employee under the firm's name performing services for the firm's contracted client. The firm ended the working relationship with the worker without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. 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. In this case the firm engaged the worker who was a licensed pediatric physician under a contract to perform services for the firm's contracted client. The firm assigned the worker work schedules and required the worker to perform the services personally at the firm's clients place of business. The firm trained the worker on billing only due to the worker's credentials and experience. The firm required the worker to provide job reports on the services performed. The firm required the worker to perform the services personally at the firm's clients' location. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies, the worker personal items and malpractice liability insurance coverage and the firm's client equipment, material, and supplies. The worker did not lease space or equipment. The firm did not reimburse the worker to any personal item expenses. The firm paid the worker as set yearly amount on a monthly basis. The customers paid the firm. The firm determined the level of payment for the services the worker performed. The worker's liability and economic loss was covered by professional liability insurance coverage which is not uncommon in the medical field. This does not constitute control over profit and loss in a working relationship and operation of a business. These facts evidence financial control by the firm over the services performed by the worker.

There was an initial signed Professional Service Agreement indicating the various terms and conditions under which the firm and worker agreed to work in performance of services for the firm's client. The agreement addressed work relationship requirement issues regarding regulations and rules, customer expectations, non-compete, non-disclosure, representation, warranties, and many other issues. The worker's services were monitored for quality, quantity, other working related issues in furtherance of the firm's best interest. The worker was prohibited from performing payable services for others without the firm's written consent at the same time worker was on duty for the firm. The agreement addressed compensation, no benefits, no expense reimbursement, facility were services will be performed, firm's control over fees charged, insurance coverage and many other issues.

The worker personally performed services for the firm's business client on a regular and continuous as scheduled basis over several months under the firm's business name. The worker did not advertise as a business to the public. The firm referred to the worker as a contractor and an employee when health care benefits were being set up.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.