

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 in the business of operating a dental office and providing dental services. The worker was engaged to provide dental services. She received a 2017 Form 1099 for her services. There was no written agreement.

The firm indicated that the worker was a new graduate and hired for a trial period. It was the firm that scheduled patients for the worker's work assignments. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker was not required to submit reports. The worker's routine was to see patients for two days based on her availability. She noted that she was required to stay even if patients canceled. Her services were provided at the firm's dental office. There were no meetings. The worker was required to provide her services personally.

Both the firm and the worker agreed that the firm provided the workplace, workspace, dental equipment and supplies as well as the office assistants. Both also agreed that the worker was paid a per diem rate with a guaranteed minimum and had no other economic risk. The customer paid the firm and the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did provide similar services for other during the same period of time though the firm disagreed. The relationship ended when the worker quit.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. This is especially true as the firm indicated that the worker was engaged for a trial period. Presumably, the worker was considered to be in a "probationary" status to allow the firm time to consider the merits of retaining the worker permanently, though no defined period of time was presented. However, probationary employees, are still considered employees for federal employment tax purposes even though they may not qualify for benefits, privileges, or seniority protection. The worker worked under the supervision of and was directed by the firm. She worked set scheduled hours at the firm's premises even if based on her availability. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control, which of course happened, when patients were scheduled for her. In addition, the worker provided her services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. It was the firm that had the investment in the facility and the equipment. The worker received a per diem rate of pay and had no other economic risk.

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. There were no benefits and there was no written agreement. The worker was engaged to provide dental services in the firm's dental practice. When doing so, the worker was not engaged in an separate business enterprise. Her services instead were essential to the firm's continuing 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.