

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

Information provided indicated the firm is a general dentistry business. The worker performed services for the firm as a dental hygienist. The firm stated she had been retained for substitute work only while employees were on vacation or maternity leave. Services were performed in 2017. The firm reported the income on Form 1099-MISC. The firm indicated the worker is called when services are needed. The office manager resolved issues. The worker was required to document each patient chart as to the services provided. Services were performed on firm premises. The worker was not allowed to hire. She was required to perform her services personally. The firm indicated the worker provided her own hygiene equipment. The firm provided the office. The worker is paid by the hour. The customer paid the firm. The firm does carry workmen's compensation. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The firm stated the worker is introduced as a substitute hygienist. All work was performed under the firm's business name. The firm indicated the daily assigned job completed.

The worker indicated treatments required were indicated in each individual patient's charts. The worker indicated she performed services from seven am to five-seven pm with one hour for lunch. All services were performed on firm premises, utilizing the firm's equipment, materials and property. She did provide her own magnification loupes which is part of her clinic attire. The worker agreed she was paid by the hour and the customer paid the firm. She agreed either party could terminate the work relationship without incurring a penalty or liability. She agreed she worked for other dentists as well. She agreed she did put a post in the dental Facebook page for temps, her qualifications and dates available. The dental office decides the hours to be worked and what days of the week and the hourly wage.

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.

Analysis

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.

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.

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. The worker was performing services in replacement of the firm's dental hygienist employee out on vacation or leave. The work was performed on firm premises, for the firm's clients, in the order as appointed by the firm. The fact the services were performed on a part time basis and for others is irrelevant. State law in which the firm resides (as in all states) reads: Practice of dental hygiene" means, regarding humans: (a) under the general supervision of a dentist, or under a written agreement with a dentist licensed under this chapter, as provided in Section 58-69-801. A dental hygienist cannot perform services unless under the direct supervision of a licensed dentist, therefore cannot be an independent contractor, who owns and operates their own business, regardless if working on a part time as needed basis, or works for others at the same time to complete a full time working schedule.