

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Dental Hygienist	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC 06PRA	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 worker initiated the request for a determination of her work status as a dental hygienist in tax year 2017 having received Form 1099-MISC. It was indicated that services were also rendered July 2016 to August 2016. The worker continues to work at the firm's dental office.

The firm's response was signed by the dentist/president. The firm's business is described as a dental office and the worker performs services as a temporary dental hygienist to cover for the firm's existing employees.

According to the firm, there has been no specific training and instructions given to the worker. The job assignments/scheduling of appointments are based on the worker's availability. The firm indicated that it is the worker and ADA standards that determine the methods by which the worker's services are performed. The firm is responsible for the resolution of any problems or complaints that may arise. The worker performs her services at the firm's location. The worker is not required to perform the services personally; appointments are canceled/rescheduled if she cannot work.

The worker responded that she was given specific training and instructions as to infection control and managing patients. She is scheduled Monday through Wednesday from 7 am to 5 pm, with a one-hour break, at the firm's dental office. The worker indicated the firm determines the methods by which she provides her services. Any problems or complaints encountered by the worker are directed to the firm's office manager for resolution. The worker stated she is not required to perform the services personally; any additional personnel are hired and paid by the firm.

The firm and worker concur that the firm provides the instruments and supplies. The worker furnishes her uniforms. The worker does not lease space, equipment, or a facility. She does not incur expenses except for her state license and continuing professional education. The worker is not covered under the firm's workers' compensation insurance policy. The worker is not at risk for a financial loss in this work relationship. Both parties agree that the firm establishes the level of payment for services provided or products sold.

There are no benefits extended to the worker. Either party can terminate the work relationship without incurring a liability or penalty. The can and does perform same or similar services for others during the same time frame.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties. In this case, the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its professional obligations are met. The worker is not operating a separate and distinct business; the worker does not have an investment of capital or assume business risks, and therefore, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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. In addition, State laws provide that the worker performs services under the general supervision of the licensed dentist. In this case, the worker is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.