

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Dental Hygienist	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 support center, managing many time consuming and often stressful business functions such as payroll, guest and staff scheduling, staff recruiting, marketing, financing, real estate management, as well as accounting and information technology for dental practices. The worker was engaged as a dental hygienist. There was no written agreement.

The worker received instructions about the office schedule, software, and protocols. The firm noted that she received instructions about supply location and equipment. Both parties agreed that she received her work assignments for the firm from the temporary agency. The worker noted that the firm determined the methods of assignment but the firm noted that the state board did. The worker noted that she contacted the firm for any issues or problems; the firm noted that the placement agency would be contacted. The worker submitted patient dental notes; the firm noted none were required. The firm noted that the worker had no set schedule, and was only called-in when needed at a dental office. The worker noted that she usually worked a full day with each patient seen in the time frame allowed by the firm at the designated location. Only the worker mentioned morning meetings. Both parties agreed that the worker was to personally provide the services.

Both the firm and the worker agreed that the firm provided everything such as supplies, facility and equipment. According to the firm, the worker provided the license, continuing education and standard scrubs. Both parties agreed that she was paid an hourly rate and had no other economic risk. The customer paid the firm. Both also agreed that the worker did not establish the level of payment for services; the firm mentioned negotiated payments with insurance companies.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. The relationship has ended.

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. 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 the absence of direct control, it cannot be doubted that many professionals are employees. The worker was engaged to provide services on an as-needed basis during hours, days, and locations as scheduled by the firm. The establishment of set hours of work by the person or persons for whom the services are performed is usually a factor indicating control. However, 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.

Furthermore, the worker was required to provide the services personally. Understandable, as the worker had to meet qualifications for her specific work position. 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.

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. 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. In addition, the worker received an hourly rate of pay and had no other economic risk. 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.

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 as a dental hygienist and was required to work under a licensed dentist. When doing so, the worker was not engaged in an separate business enterprise and, in practicality, could not be. Her services instead were essential to the firm's continuing operations of providing dental support services. 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. .