

SS-8 Determination—Determination for Public Inspection

Occupation

06MPX Medical Practitioners

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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 provider of outpatient mental health services. The worker performed services as a therapist for the firm from 2013 through 2017. The firm reported income earned on Form 1099-MISC. They have provided a copy of the independent contract agreement, that they state specifically outlines the fact the worker was an independent contractor. They provided a copy of their policy and procedure manual. The firm stated they provided the premises, (but she can choose any location to perform sessions) basic supplies and insurance billing services. The firm indicated the worker provided marketing materials, liability insurance, business cards, and additional therapeutic and furnishing supplies as may be desired. The worker does not lease the facility. The worker is paid a percentage commission of reimbursements from the customer and/or insurance companies. No training given and the worker is a licensed therapist. The worker has complete control and discretion in setting her own appointments and had full discretion on how to conduct each therapy session with customers. Patient records are kept on each patient. The firm indicated the patient paid the worker, but all money was turned into the firm. The firm stated they were liable to the worker for commission payment of work performed. The worker retained customers and liability to customers for continuation of care. The worker performed services for other firms during this period of time. The worker notified the firm of intent to end the contractual agreement.

The worker agreed she provided services as a therapist or clinician for the firm. She agreed the terms and conditions of the work arrangement were outlined in a written and signed agreement. However, via day-to-day behavior, those terms were not always followed, but rather used when needed. Work assignments were given from the firm's intake department. The worker stated all client contact was performed on the firm premises. Training and weekly team meetings were sometimes mandatory (copies of e-mails and per the firm's policy and procedural manual). She was required to electronically complete all patient clinical notes as outlined in the Policy and Procedural Manual (to be completed within 24 hours of seeing the client.) The worker indicated her work schedule was guided by the firm, due to office space limitations. The worker indicated she was paid by commissions and by the hour. She agreed she would process client payments to the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as a therapist for the firm, a copy of the firm's business card was provided. The worker stated she provided a thirty day written notice to terminate the work relationship.

Analysis

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.

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.

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. All services were performed under the firm's business name, according the firm's policy and procedures. Those policies/procedures gave explicit directions as to how the services were to be executed. The fact the worker had autonomy to perform her works, goes with being a licensed professional. Guidance would not necessarily be required, but the firm retained the right to do so. The clients paid the firm for the services received. The firm maintained controlled of billing, collections and payments. The clients were assigned to the worker via the firm's intake specialists at the firm (as indicated on their website).