

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

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Facts of Case

Information provided indicated the firm is a pediatric speech-language pathology clinic. The firm indicated there was not a written agreement between parties. She was paid 100% commission based on revenue generated and collected. She was in charge of setting her client appointments and schedules. She was referred from a friend. She was not provided her own office. The firm has a single office with two desks, which are shared, including shared office equipment and supplies for their client meetings. She is not required to come into the office, she has the option of meeting with her clients at the office, in schools or their homes. Thirty percent is in the office, seventy percent in schools or client home. If she does not meet with a client and generate revenue, she does not get paid anything. She is not paid while writing reports, documenting client files or communicating with parents and schools via e-mail and phone. She is not reimbursed for mileage. The firm stated coaching/guiding how to communicate with parents, teachers and schools in order to generate leads and new clients. She generates an evaluation report for each client, and daily notes regarding the session.

The worker states she provided services as a pathologist for the firm's clients. The worker stated she was required to perform services according to the firm's policies and procedures manual. She indicated firm management controlled schedules for where and when to work, gave instructions and detailed training on providing services, provided uniforms, equipment, and facilities. She indicated she was paid by the hour, reimbursed for travel expenses and maintained an at will employment with no contract. The firm provided supervision for completion of her clinical fellowship and provided continuing education courses. The firm assigned patients, therapy goals, work time and location via e-mail or shared firm software. She agreed she was required to provide evaluation reports, therapy data/notes (on company forms, examples provided) for each client. She was to be available Monday through Thursday nine to five and Fridays after first year of employment. She performed services on firm premises, private schools or client homes. Occasional staff meetings were required. She was required to perform services personally. She was represented as a member of the staff, and was given a company e-mail address. She quit and gave a two weeks notice.

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.

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 work was performed under the firm’s business name as a representative of the firm. This was evident by the fact the worker was shown on webpages as being a member of the firm’s staff, and having been issued a company e-mail account. She was required to follow the firm’s policies and procedures. The firm provided the necessary space, equipment, uniforms, evaluation/progress forms etc. The worker was paid by the hour or commission, indicating no opportunity for profit or loss. If a persona is in an internship or fellowship program, it indicates they are in training, and do not own their own business to provide services. A licensed professional can also be an employee of the company they provide services for.