

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 general dentistry practice. The worker performed as a dental hygienist on a temporary as needed basis for tax years 2016, 2017, 2018 and 2019 (if needed). The firm has reported the income paid for those services to date on Form 1099-MISC. The firm indicated it had no control over whether she comes to work and she does not follow their office policies. She set her hourly pay rate, which is about 150% of the other employees in the same position. The worker is called on an as needed basis, in 2018 she was called for a last minute coverage for one of the employees. She sees patients that were scheduled for the regular hygienist. All work is performed at the dental office, utilizing the firm's equipment. She provided her own magnification loupes. The client paid the firm. She is represented as a temporary hygienist.

The worker agreed she performed services on the patients, scheduled by the firm. She provided clinical notes on each patient chart, as to the treatment performed, which had been prescribed by the dentist. All work performed on firm premises. The firm provided all supplies and equipment. She agreed the firm paid her by the hour and the patient paid the firm for the work received.

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. Dental Hygienists are required by law to perform services as prescribed by a licensed dentist. Therefore, they cannot own and operate their own business to provide those services (definition of an independent contractor). It also does not matter whether the work is part time, or temporary. This worker is called on an as needed basis, and has established a part time work relationship on a continuing basis. She incurs no business operating expenses as all work is performed on the firm premises, utilizing the firm's equipment and supplies. (The purchase of her uniforms or magnification loupes, would be considered tools of the trade and not a business financial expense.) The hygienists can also perform similar part time services for numerous dental firm's and would be an employee of each. All work was performed at the firm, during the firm's business hours, and worked patients scheduled by the firm. So the firm did in fact "control" the hours worked.