

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

For IRS Use Only:

Facts of Case

The worker is seeking a determination of worker classification for services performed as an associate dentist for the firm from December 2018 until February 2019. The firm issued a worker a 1099-MISC for both tax years. The worker feels that they were misclassified as an independent contractor because the firm gave the worker a schedule, the firm provided all supplies, and the worker performed all services at the firm's premises. The worker had responded to an advertisement by the firm seeking an associate dentist, and there were no written agreements between the parties.

The firm states that they provide dental services to the public. The worker was requested to provide dental services to the patients of the firm. The worker's title was associate dentist. The firm believes that the worker was an independent contractor because the worker agreed to receiving a 1099-MISC from the firm for services provided.

The firm states that they did not provide any training to the worker. The firm scheduled patients in accordance with the worker's availability. The firm states that the worker determined the methods by which job assignments were performed. The worker was expected to resolve all problems and complaints experienced on the job themselves and carried malpractice insurance. The worker was expected to keep dental clinical notes and records of patients they treated. No official reports were required of the worker. The firm states that the worker was usually the only dentist in the office where they performed services. The worker diagnosed and performed a wide variety of dental procedures on scheduled patients. The worker wrote clinical notes and maintained patient records. The worker's job duties were split between two of the firm's dental office locations. The worker was not required to attend any meetings, and the firm required the worker to personally perform services. The firm was responsible for hiring any helpers needed. The worker states that the firm owner provided the worker with orientation on the computer and patient treatment protocols for the firm's dental offices. The firm provided the worker with a schedule of which days to work and at which office to perform services. The worker states that the firm's owner was responsible for problem resolution and determining the methods by which jobs were performed. The worker was required to record all treatments into patient records daily. The firm provided a calendar with a work schedule for each day and location. The worker would report to the assigned location and work with other employees of the firm to treat patients on record. The worker performed all services at the firm's premises. The firm's owner would call the worker if they wanted to communicate with them. The worker was required to perform all services personally, and the firm was responsible for hiring and paying all helpers needed.

The firm states that they provided the premises, dental equipment, and materials. The worker provided some dental equipment and magnifying loops. The firm states that in lieu of a lease, the firm withheld a portion of the worker's commissions for use of the firm's premises. The worker's expenses included this withheld portion, support staff, dental equipment, malpractice insurance, and laboratory fees. The firm paid the worker a set commission percentage for services provided to patients, and the worker did not have access to a drawing account for advances. Customers of the firm paid the firm for services provided. The firm did not carry worker's compensation insurance on the worker. The firm states that the worker could face the possibility of a lawsuit from customers for malpractice as a possible financial risk. The worker also only received a percentage of income collected by the firm for services provided, and this percentage could be delayed in getting paid out to the worker if collection was delayed. The firm states that the worker established the level of payment for services provided. The worker states that the firm provided all dental supplies, equipment, materials, workspace, and operatories. The worker provided nothing and did not lease anything. The worker states that they had no expenses and were paid a commission. The worker states that they had no exposure to economic loss or financial risk. The worker states that they did not establish the level of payment for services provided.

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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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation as a dental office. The firm provided work assignments by virtue of the scheduled patients on record, required the worker to report on services performed through clinical notes, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the commission percentage pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business as a dental office. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.