

**SS-8 Determination—Determination for Public Inspection**

Occupation Medical Practitioners/Scientists/Therapists	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 a physician for the firm from 2015 until 2017. The worker received a 1099-MISC from the firm for all three years they provided services. The worker feels that they were misclassified as an independent contractor because the firm provided the worker with training, reports were to be put in a specific template, the worker followed the firm's schedule, the firm paid for and provided the office help and facility, and the firm paid for services the worker required for their job duties. The worker attached a copy of the agreement between the parties.

The firm states that it connects medical care providers with the social security administration by acting as a conduit for medical evaluations for disability claims. The firm states that the worker was an independent contractor because they could decline work, they worked for other firms, was free from oversight and direction and control of the firm, and the worker did not do the same work as the firm. The worker would provide their availability to the firm.

The firm states that the worker was trained in the requirements of the social security administration. The worker submitted their availability to the firm, and the SSA would then schedule clients. The worker determined the methods by which jobs were performed. If the worker encountered any problems or complaints, they were required to contact the firm for problem resolution. The worker was required to submit medical reports to the SSA through the firm. The worker performed medical evaluations for disability claims through the SSA. These evaluations were scheduled around the worker's availability previously submitted through the firm to the SSA. Job duties were performed at a medical facility rented by the firm, usually on a weekend day. There were no meetings required of the worker, and the worker was required to personally perform services. The firm would hire and pay medical staff to assist the worker in their job duties, and the worker was not responsible for hiring any help. The worker states that the firm provided 2 hours of telephone training with the firm's physicians, required the worker to watch training videos, and required the worker to pass a quiz. The worker received job assignments from the firm's area manager. The firm determined the methods by which jobs were performed and the firm's area manager assumed responsibility for problem resolution. The worker provided the firm with medical evaluation reports discussing exam findings, the template for which the firm provided, and the worker attached to their Form SS-8. The worker performed evaluations one to two days a month, usually from 8am until 6pm. The worker performed services at a sole location that the firm rented and did not have to travel to other offices. There were no meetings required of the worker, and the worker was required to perform services personally. The firm hired and paid all helpers needed.

The firm states that they provided a rented medical facility for the worker. The worker provided their medical license, computer equipment, internet, and office supplies at home used to complete reports. The worker did not have to lease anything, and their only expenses were medical licensing fees. The firm paid the worker a set daily amount. The firm was paid for services provided by the SSA. The firm did not carry worker's compensation insurance on the worker, and the worker faced no financial risk. The firm established the level of payment for services provided. The worker states that the firm also provided preprinted examination forms to be completed for each patient, and a dictation and transcription service for report completion. The worker did not provide anything or lease anything for their job duties. The only expenses incurred by the worker were for medical equipment they used, and mileage. The firm reimbursed the worker mileage which was included in their lump sum payments. Customers paid the firm, and the worker faced no financial risk.

The firm states that there were no benefits offered to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker performed similar services for other firms during the relationship and did not need approval from the firm to do so. The worker was prohibited from providing similar disability evaluation services to other firms for 36 months upon termination of the agreement between the parties. The worker was not a member of a union and did not advertise their services to the public. The worker would submit their reports to the firm, who would then pass them along to the SSA without oversight or changes. The worker was represented by the firm as a member of the firm's panel of physicians. The worker no longer provides services for the firm based upon a mutual agreement to terminate the work relationship. The worker states that the firm provided medical malpractice insurance as a benefit. The worker states that they did not perform similar services for other firms during the work relationship. The worker states that they performed services as a contractor under the firm's name. The worker quit, thus ending the work relationship.

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## Analysis

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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 of providing medical evaluations for disability claims. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, 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. The worker did not lease anything and the firm provided the worker with an office space, support staff, and medical malpractice insurance. Based on the daily 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 of providing medical evaluations. 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 worker was forbidden from providing similar services to other firms during the 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](http://www.irs.gov); Publication 4341.