

SS-8 Determination—Determination for Public Inspection

Occupation 06THE Mental Health Therapist	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 firm contracts with state agencies to provide professionals to assist families and individuals with services to gain independence. The firm engaged the worker through an application process to provide licensed qualified mental health services according to state regulations and the firm's business policies and procedures. The firm provided the worker with necessary training in order to perform the services according to changes in state regulations and contracts entered into with state agencies. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to provide weekly progress notes and quarterly status reports. The firm allowed the worker to perform the services on a flexible variable schedule at the firm's clients locations, home or at the firm's office. The firm required the worker to attend monthly status report review meetings. The firm required the worker to perform the services personally.

The firm provided all the jobs, paperwork, and administration. The worker provided personal items. The worker did not lease equipment or space. The worker incurred personal item related expenses and was not reimbursed for service provided items. The firm paid the worker on a per job basis originally and then subsequent an hourly wage basis. The firm was paid through client resources. The firm did not carry workers' compensation insurance. The worker did not determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk per the worker. The firm did not know what economic loss and financial risk the worker could incur.

There were signed consultant agreements as well as other signed agreements between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval per the firm. The worker did no advertising as a business to the public. The worker performed the services under the firm's business name. The firm referred to the worker as a contractor to the clients. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. In this case, the firm not the worker had control over the methods and means used in the performance of the services. The firm engaged the worker through a application process to perform consulting services for the firm's approved clients according to state rules and regulations as well as business policies and procedures. The firm provided the worker with training and instructions on the state rules and regulations and the firm's business policies and procedures to use in performance of the services. The firm assigned the worker jobs to perform. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to provide the firm with job reports during firm determined intervals, to attend meetings, and to perform the services personally. The firm allowed the worker to work on a flexible schedule at various locations. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. 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 firm provided the jobs, administrative support, and funding. The worker provided personal items and incurred expenses when personal items were used. The firm did not reimburse any expenses. The firm paid the worker a set amount per job originally and then hourly wage. The firm was paid through client resources. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were signed consulting and other agreements entered into between the firm and worker indicating the worker to be an independent contractor. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The agreement addressed all aspects with regard to job expectations and business policies and procedures. The other signed agreements addressed the scope of work, which covered probationary period, job qualifications, health screening, other certifications, training, background check, and list of jobs needed to be performed. Another agreement addressed compensation and expenses. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business clients on a regular and continuous variable flexible schedule over several years under the firm's business name.

Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

We have determined the worker was an employee under common law for the services performed in this working relationship