

SS-8 Determination—Determination for Public Inspection

Occupation 06THE 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

Information provided indicated the firm provides therapy services to its clients. the worker performed services as a Registered Behavior Technician for tax years 2015 through 2018. The firm reported the income on Form 1099-MISC. The firm provided a copy of the Independent Contract agreements, to include a copy of the job descriptions. The contracts included a pay raise from tax 2017 to 2018. The firm provided a copy of the Registered Behavior Technician Certificate Letter. This letter indicated the worker must practice under the close, ongoing supervision of at least one Board Certified Behavior Analysts. A copy of the Supervision Contract between the worker and the analyst, which stated she requires 1500 hours of supervised independent fieldwork experience, supervisory period of two weeks. A copy of an employment verification form, stating the firm as the employer, worker as the employee, then states she is an independent contractor further down on the form. It states she was paid Eighteen dollars per hour, paid biweekly. the firm also provided a synopsis and supporting documentation for Relief Under Section 530. the firm provided a copy of an occupational newsletter, that states the therapist cannot be independent contractors in the US. the firm then sent a message stating as of November 5, 2018 all behavior technicians would become hourly or salaried employees.

The worker filed the work classification request and she feels she was incorrectly classified as an independent contractor. She is required to report her schedule to the firm and submit weekly timesheets, notes regarding treatment for each session (on firm templates) , she is supervised a minimum of once per week by the lead therapist. Copies of the instructions were provided for submittance of timesheets, reimbursements, summaries etc. Team meetings are held regarding how they are to complete their job. Supervisions are done weekly at which time the firm gives direct instructions. The firm assigns children to the worker and tells them how many hours per week the client is to receive services. The work schedule varies, dependent on the client. Services are performed on firm premises and at the client's home or at schools. All hiring is done through the firm. The worker is required to perform services personally, under the supervision of a licensed analyst. The firm provided all materials which could be utilized by the workers. The worker indicated she also provided things not found in the clinic. She agreed she was paid by the hour. The client paid the firm. The worker indicated she was fired.

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. All services were performed under the firm's business name, under a direct supervisor, as regulated by labor laws. The firm assigned and reassigned clients as they so chose. The worker was paid by the hour on a biweekly basis. Contracts show the rate of pay was increased in 2018, plus bonuses were also given. The clients paid the firm for the services received. The firm has indicated they have correctly changed the behavioral therapists to employee status. Any services performed prior to that should also be changed and income should be correctly reported as wages. The firm has requested Relief Under Section 530, but since they have already corrected the worker's to employee status, they would no longer qualify.