

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

The worker stated she received training and instructions from the firm specific to [REDACTED] testing on patients, however the firm disagrees with this and stated the worker knew how to perform requisite testing without additional training. The firm stated they provided the worker with a bi-weekly list of tests required to be completed and that the worker controlled the scheduling and performance of the work, the worker generally agreed that the assignments were provided by the firm but stated she had no control over the scheduling of these tests as they were performed at the firm's location. The worker stated the firm determined the methods in which these assignments were performed, the firm replied that the methods were standardized testing. The parties agreed that the firm was to be contacted if any problems or complaints were to arise and the firm was responsible for resolution. The firm replied that no reports were required from the worker, however the worker disagreed, saying data reports on patients were required by the firm. The worker responded that her daily routine was from 8:00am-3:00pm, Monday through Wednesday at the firm's location, she was provided with keys and carried out assigned testing on patients, the firm generally agreed, although stated her daily hours were from 8:00am to 2:00pm and if there were conflicts with scheduling, the worker was able to alter her schedule as she determined. The parties agreed that the services were performed 100% of the time at the firm's premises. The parties gave conflicting responses regarding required meetings, the firm responded that the worker was not required to attend meetings, alternatively, the worker stated she was required to attend meetings with clients at the firm's premises, penalties for not attending meetings were dismissal. The parties differed in their responses as to whether the worker was to provide her services personally, the worker stated she did, while the firm stated she did not. If substitutes or helpers were needed the firm stated the contractor hires them, and approval is needed from the firm, and the firm is responsible for paying them, however the worker stated the firm was responsible for the hiring and paying of any substitutes or helpers. The parties agreed that materials and supplies were provided by the firm and that the worker provided none of her own. The parties gave different responses on the type of pay the worker received, the firm stated it was a contracted amount, however the worker stated she received an hourly wage. They both agreed that the customer's pay the firm, however the firm stated the worker established the level of payment for services, however the worker responded that the firm established the level of payment for services provided. The worker stated she could not incur an economic loss or financial risk beyond the normal loss of salary, the firm responded that the worker provided malpractice insurance. The parties agreed that no benefits were available to the worker and the relationship could be terminated without incurring a liability or penalty. The firm stated the worker was providing similar services for other during the time entered in Part 1, line 1, the worker disagreed. The firm stated no advertising was done by the worker. The firm stated the worker was represented to its customers as [REDACTED]. The worker responded that she was represented as an employee. The firm stated the work relationship ended when the worker terminated the agreement, the worker replied that she left when she found another job.

Analysis

Based on the application of the three categories of evidence, the worker in this case was under the direction and control of the firm to the extent necessary to meet the firm's business objective. Although the parties disagreed on who determined the methods in which the worker was to complete her assignments, it is believed that the worker may have developed her own methods, but the firm retained the right to change the worker's methods to protect its business interests. The worker received her assignments from the supervisor of the firm and the supervisor retained the right, if necessary, to protect their business interest, to determine or change the method used by the worker in the performance of these assignments. The workers services were integral to the firm's business operation. The work relationship could be terminated by either party without incurring liability or penalty. There was no formal written agreement between the payer and the worker setting forth the terms and conditions under which the worker was to perform his services. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee.