

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 firm is a chiropractic office. They provide massage therapy and chiropractic services. The firm engaged the worker as a massage therapist from 12/2017 to 10/2019. The firm's perspective is the worker was an independent contractor because she was able to set her own work schedule according to her availability. The firm also stated the worker operated under her own license and liability insurance. Therefore, their treatment of the worker as an independent contractor was appropriate. The worker's perspective is her hourly pay and schedule were controlled by the firm and the firm provided all the worker's supplies. Therefore, she should be an employee. The firm submitted as evidence a copy of the workers liability insurance along with a copy of a W-9 signed by the worker. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The firm stated the worker did not received any training. The worker had attended a massage therapy school where she had been trained as a massage therapist. According to the worker, when she was dealing with the firm's chiropractic patients, she would receive instructions from the firm on the treatment necessary. The firm indicated they would call or text the worker with a patient appointment request. She could then choose to either accept or decline the request due to her availability. The worker indicated the firm would schedule all appointments. She would perform one-hour massages and help with the chiropractic patients. The firm specified the worker would determine the methods by which the assignments were performed based on the patient's needs. However, the worker contends the firm determined the methods of how she performed her assignments. The firm required the worker to contact them if any problems or complaints arose. The worker describes her schedule as 8:00am to 2:00pm. Her schedule was controlled by the firm and was usually filled causing the worker not to be able to take any breaks between appointments. The firm asserted the worker's routine was to provide massage therapy to patients that were on her schedule when she was available. She performed the services on the firm's premises. The worker was not required to attend any meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm indicted the hiring or paying of substitutes or helpers was not applicable int this case.

Both parties agree, the firm provided the worker with the necessary supplies, equipment and materials need to perform the services for the firm. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker carried her own insurance to protect against financial risk. The firm established the level of payments for the services provided. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the work relationship at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform the services for others. She did not advertise her services to the public or maintain an office, shop, or other place of business. The relationship between the parties ended when the worker resigned.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customers. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their customers.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Payment by the hour, 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.

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 firm'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. 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 common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

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