

SS-8 Determination—Determination for Public Inspection

Occupation 06THE.21 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

Information provided indicates the firm Holds a contract with the State of Minnesota to provide outpatient mental health services. The worker had been retained in 2013, 2014, 2015 as a mental health practitioner for the firm. She provided assessments developed treatments plans, and facilitated strategies to assist the client to function independently. All treatments were document per law by the State of Minnesota. The firm indicated the worker is trained to use the firm's electronic health records to fulfill state/government requirements. The initial caseload is proposed to the worker, however she had the discretion to add or drop clients. She performed the services at her discretion using her professional judgment. She was to report to the clinical supervisor if there were any issues or problems. She was required to submit functional assessment and treatment plans, progress notes etc, per client. Services were performed at the clients' location 97% of the time, some on company premises. Some clients progress better in group settings. The firm indicated per the Minnesota Dept. of Human Services Health care programs provider manual, the worker is required to provide mental health services under clinical supervision. She is to attend one hour per month. Monthly meetings are required. The firm indicated the worker could hire a sub, with permission of the firm. The sub would bill the firm directly for payment. The firm provided government-mandated electronic health records on-line system for documentation. The worker provided her own transportation, computer, cell phone, handouts for clients. The firm paid twenty-five dollars per month towards secure internet service. The worker had to provide proof of purchase. The worker is paid by the hour on invoiced hours billed, plus productivity-based incentive program that is a bonus that rewards the worker for the number of client fact to face and travel hours performed. The customer paid the firm. The firm established the rates in coordination with Government agencies and government-contracted MCO insurance payers. She is represented as a mental health practitioner under contract of the firm. The relationship ended by mutual agreement.

The firm provided examples of the Individual Rehabilitation Plan form, Locus Recording Form (initial assessment Forms), Client Progress Note Form, copy of invoice submitted by the worker, copy of her certificate of Insurance, IC agreements. The contract stated the IC was required to provide services 30-40 hours per week. They are required to meet a minimum productivity requirement of 60% billable (by Pathways) face to face time with individual clients (in addition to travel time).

The firm will have the sole and exclusive right to establish billing rates for professional services rendered by the IC.

The worker indicated they were given two weeks of training and had weekly supervisor check-ins. She was not able to perform services without direct supervision from a licensed clinical supervisor. The firm assigned the case load. She indicated she was not allowed to choose who to accept or decline. She contacted the clinical supervisor for any issues or problems. She had state/government mandated forms to complete per patient. The worker indicated services were performed in the office (10%) and the in the field (90%). She was required to attend monthly staff meetings, weekly supervisor meetings, paperwork compliance meetings. Her services were to be provided personally. She was required to provide services 40 hours per week. The firm provided access to the printer, e-mail and online documentation software. She provided her car, cell phone, laptop, gas and insurance. The firm reimbursed twenty dollars per month for phone bill. She agreed she was paid by the hour, the customer (State of MN) paid the firm. The worker indicated she was given bonuses. Either could terminate without incurring a penalty or liability. She was represented as a mental health professional under the firm's business name. She declined to sign a new contract for 2016.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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

Analysis

herefore, your statement that the worker was an independent contractor pursuant to an 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.

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

The term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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.

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 are performed under the firm's business name. The worker was required to perform those services under direction of a clinical supervisor. The firm maintained sole authority to determine the rates charged, to bill and collect for the services provided by the worker. The worker was required to provide services on a full time 40 hour per week basis. The worker was paid by the hour, at a reduced rate (\$18.00 per hour), had she actually been "in business for herself" for those services. The services performed are a necessary and integral part of the firm's business to assist them in providing the mental health services they are contracted to provide.