

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Dental Hygienist	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 dentist running a dental office and the worker was engaged by the firm through a application process to perform temporary dental hygienist services while the firm's regular hygienist was out on maternity leave. The firm provided the worker with business practices and procedures training. The firm assigned worker jobs to perform for scheduled dental patients. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the on duty dentist regarding any problems or complaints for resolution. The worker was required to provide the firm with patient dental reports. The worker performed dental hygienist services on the firm's patients at the firm's place of business. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed per the worker, the firm indicated this was not applicable.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items and liability insurance. The worker did not lease equipment or space. The worker incurred personal item expenses and the firm did not reimburse any expenses. The firm paid the worker an hourly wage. The firm was paid through customer resources. The firm did not carry workers' compensation insurance. The firm stated the worker determined the level of payment for products sold and services performed and the worker stated this was determined by the firm. The firm stated the worker's economic loss and financial risks were related to damages or injuries and worker indicated none to this issue.

There were no signed contracts between the firm and worker. The firm provided no benefits. The worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. The firm referred to the worker as a hygienist to the customers. Both parties 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 not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, 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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. 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 significant financial investment in a business and did not incur any significant on-going business expenses. 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 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 firm paid the worker an hourly wage and the firm was paid through the firm's customers resources. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. There was no legal documentation provided to indicate the worker was responsible to damages or injuries and these issues would not be considered having control over profit and loss in the day to day operation of a business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts submitted between the firm and the worker. The firm indicated the worker did perform similar services for others while performing services for the firm 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 personally performed services for the firm's business on a regular and continuous scheduled basis over several months under the firm's business name.

Both the firm and the 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.