

SS-8 Determination—Determination for Public Inspection

Occupation

06MPX Medical Practitioner

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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 in the business of operating a dental practice. The worker was an associate dentist. The worker received a 2016 Form 1099-MISC for her services; she continued to work in 2017 as well. There was a written agreement covering this work relationship as well as any services performed for the firm's affiliates.

According to the worker, the firm told her how to manage her patients, and perform dental treatment in a set amount of time. She was trained on how to write chart notes, fabricate dentures, extract teeth and perform crown preparations. The firm scheduled patients for the worker's workdays which were chosen by the firm. The firm indicated that the worker was provided with no training. She determined the necessary patient treatments and was responsible for any issues arising from her treatment. The patient records belonged to the firm. Both agreed that there were no required reports. The worker worked set scheduled hours and days, dependent on the number of patients. Her work schedule was prescribed by the firm according to the information provided. She worked at the firm's dental office locations with the hours, locations and patients treated all determined by the firm. The firm noted that the worker determined how long to schedule each patient for treatment even though the scheduling was done by the firm. There was disagreement over any required meeting attendance. The worker was to provide the services personally as she could not assign her duties to others. With only the firm hiring and paying others. Both parties agreed that only the firm could hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided all the dental supplies. The worker also included that the firm provided the facility, workspace, equipment, materials, and patients as well. The worker received a percentage of adjusted production with no minimum guarantee and was paid bi-monthly. The customer paid the firm. The firm carried workers' compensation insurance on the worker. Both agreed that the worker did not establish the level of payment for services.

Both the firm and the worker indicated that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others although the firm indicated that it did not know. There was a non-compete clause in the written agreement. All the worker's services were performed under the firm's name. The relationship ended when the firm indicated that they could no longer afford to pay her; this became effective immediately though the agreement specified a sixty day notification. The firm indicated that the work relationship was discontinued due to lack of productivity.

The agreement included many elements of control including the following information:

- o Worker was engaged as an Independent contractor.
- o She was paid 30% of her adjusted percentage which equaled revenue made by (firm) Company after in-network dental insurance write-offs had been applied; to be paid bi-monthly
- o To devote time and best efforts to Company's patients
- o On-call duties
- o Company will prescribe hours and days for the worker; worker agrees to make this position her primary focus
- o Non-compete covenant-within 5 miles of Practice locations for 2 years following termination
- o Non-solicitation - of Company's patients or staff for 2 years
- o Worker to carry malpractice insurance
- o Worker agrees to abide by Company's policies, peer review committee, and reasonable procedures
- o Term of agreement for 1 year unless -either party can terminate upon 60 days written notice
- o All patient records remain under ownership and control of the Company

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances. Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite the absence of direct control, it cannot be doubted that many professionals are employees.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. While the worker may not have received any formal training or instructions, she worked under the supervision of the firm, subject to its policies and peer review. The worker worked set scheduled hours at the firm's premises even if her scheduled hours varied. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. In addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. It was the firm that had the investment in the facility and the equipment. The worker received a percentage of her services billed and had no other economic risk.

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. There were no benefits. There was a written agreement; however, the firm's belief 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. The worker was engaged as an associate dentist by the firm. When doing so, the worker was not engaged in a separate business enterprise. Her services were integral and part of the firm's continuing operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.