

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX 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

Information provided indicates the firm provides general dentistry services. The worker performed services as a dental hygienist, on a temporary basis, replacing the employee who was out on maternity leave. The firm indicated there was a verbal agreement offered to the worker to choose between thirty-five an hour as a W-2 or thirty-eight an hour as an independent contractor. She elected to be compensated at thirty-eight an hour as 1099. Worker assignments were based on the scheduled patients for the firm. She was required to prepared patient clinical notes on each patient. All work was performed at the dental office location. The firm indicated all equipment, materials and supplies were provided by them. The worker provided her license, continuing education, CPR etc. The worker was paid by the hour for the services performed. The patients paid the firms in question. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker was represented as a contractor. The firm indicated in tax year 2018 the worker elected to be put on payroll.

The worker agreed she provided services as a registered dental hygienist. Dental Hygienists are not allowed to practice on their own, services must be performed under a licensed dentist. The firm determined the work assignments. She agreed all services were performed at the dental clinic usually from nine am to six pm. Morning staff meetings were held. She was required to perform her services personally. She agreed the firm provided the equipment and supplies. She was paid by the hour, the patients paid the firm. No additional benefits were provided. Either party could terminate the work relationship without incurring a penalty or liability. She indicated she was fired.

Analysis

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, 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.

Therefore, 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.

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. A dental hygienist, cannot be an independent contractor as it is required by law all work must be performed under the direction and control of a licensed dentist. Whether the services are performed full time, part time, or on a temporary basis, all work must be done under the direction of another. All work was performed on the firm premises, utilizing their equipment, materials and supplies. The worker was paid by the hour. The patients paid the firm for the services performed. Furthermore, it is never a matter of choice, whether a person wishes to be treated as an independent contractor, there are employment tax laws that need to be followed, and it is the firm's responsibility to correctly classify the individuals who perform services for them.