

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 general dentist practice. The firm engaged the worker as a dental hygienist from 8/2020 to 12/2020. The firm's perspective is the worker was an independent contractor as she only worked 5 days in her dental practice in 2020. The worker was hired to fill in/substitute for another permanent hygienist. 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 worker completed an application for the job. The firm required the worker's dental hygienist license to be current. According to the worker, she would receive a call or text from the firm to see if she was available to work. When the worker would arrive at the firm, she was provided a schedule with a list of patients with the services that were going to need to be performed. The worker stated the firm determined the methods by which those services were to be performed whereas the firm stated it was the worker. Both parties agree, the firm was responsible for problem resolution. The worker was hired on an as-needed basis. The firm indicated the worker was to arrive 30 minutes prior to the first patient. She would then set up rooms and then review patients with the team. She received regular remunerations for her services. The worker was not required to submit reports. 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. Her services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

Both parties agree the firm provided the worker with all the necessary equipment, supplies and materials needed to perform her services. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any 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 carry worker's compensation insurance on the worker. 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. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform the services for others during the term of the work relationship. She did not advertise her services to the public or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the firm no longer needed the worker's services.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case. The facts of the case indicate that the firm had the right to control the worker.

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.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

Whether the worker provided his services on a temporary, part-time, or full time according to a schedule determined by the firm, is insignificant with regard to the determination at hand. Flexibility of a worker's schedule does not indicate that a worker is an independent contractor when other characteristics of the work relationship indicate that the worker is an employee, as is the situation in this case.

Regardless if the worker worked on a full-time basis or part-time basis, for Federal income tax withholding and Social Security, Medicare, and Federal unemployment (FUTA) tax purposes, there are no differences among full-time workers, part-time workers, and workers hired for short periods. Income tax withholding may be figured the same way as for full-time workers.

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 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 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.

Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she filled out an application for the job. This is a strong indicator that the worker is not an independent contractor.

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