

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Aides/Assistants

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 a dental office. The firm engaged the worker as a dental hygienist on an as-needed basis through an agency providing temporary workers. The firm reported the worker's remuneration on Form 1099-MISC for 2017.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. If problems or complaints occurred, the firm stated that the worker contacted the temp agency for resolution. The worker updated patient records for the services provided. Her daily routine was dependent upon the firm's patient schedule. The worker performed her services on the firm's premises. She was required to perform her services personally.

The firm provided masks, gloves, and dental equipment. The worker provided her own uniform, glasses, loops, and other protective gear. The firm stated that it paid the worker on a lump sum basis. It did not cover her under workers' compensation. Customers paid the firm directly at prices established by the firm. The worker's risk of loss involved the loss or damage to her own uniform, glasses, loops, and other protective gear.

The firm did not make benefits available to the worker. Both parties retained the right to terminate the work relationship without incurring a penalty or liability. The worker performed similar services for others during the same time period. The firm represented the worker as a hygienist to its patients while she was on the firm's premises.

Analysis

Factors that illustrate whether there was a right to control how a worker performed 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 firm relied upon the worker's prior training and experience to perform her services, she followed the schedule set by the firm. She performed her services on the firm's premises. The firm must have been ultimately responsible for any problems or complaints that may have occurred in the office. 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. The firm's statement that the worker performed services on an as-needed basis and was therefore, an independent contractor, is without merit as both temporary employees and independent contractors can perform services when the needs of a business warrants. The worker was required to perform her services personally. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 worker utilized her personal glasses, loops, and other protective gear. 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 set the price for each service rendered. It paid the worker on a lump sum basis, and the risk of loss was absent. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were 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 as a dental hygienist were a necessary and integral part of the firm's dental practice. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. These facts show that the firm retained control over the work relationship and services of the worker.

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.