Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
COM - Communications Workers (examples: newspaper reporters, union	☒ 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 worker is seeking a determination of worker classification for services performed for the firm as a member success coach from March 2024 until March 2025. The worker filed a Form SS-8 because they believe that the firm misclassified them as an independent contractor and that they should have received a Form W-2. The worker was responsible for providing coaching and support for therapists, addressing user questions, managing customer support, resolving concerns, and working with the team to identify strategies and to provide feedback. The worker believes that they were an employee of the firm because the firm controlled the worker's schedule, required specific tasks, managed the worker's performance, provided the worker with necessary tools, required the worker to follow company procedures, and made the worker's role essential to their business. Additionally, the worker's job duties were not project-based and the worker had little control over how their work and interactions were done. There was a written agreement between the parties regarding the worker's hourly rate of pay and their job schedule, as well as the work relationship being ongoing and the fact that the firm could terminate the worker with 5 days of notice. The worker attached more thorough written explanations regarding the work relationship as well as pay statements for 2025. The firm states that they are a healthcare services company providing medical oversight and administrative support for medical providers. The firm classified the worker as an independent contractor but did not provide an explanation. The firm attached a copy of the written agreement between the parties.

The firm states that they provided role training and direction on their priorities and job tasks. The manager gave the worker job assignments through conferences and instant messages. The contractor and manager determined how to perform jobs. If the worker encountered any problems or complaints, they were required to contact the manager for problem resolution. No reports were required of the worker. Services were performed as scheduled at locations other than the worker's home. No meetings were required of the worker. The firm did not require the worker to personally perform services, but did not give the worker hiring authority to hire helpers or substitutes. The worker states that the firm required the worker to attend multi-week training sessions through the firm's success manager, covering the firm's systems, tools, procedures, internal structure, and managing customer interactions. The chief of staff provided the worker with job assignments through CRM automations as well as email, slack, and zoom. The worker's direct supervisor and other members of the leadership team for the firm determined the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact either their direct supervisor or an escalation pathway if the situation was medical. Either the direct supervisor, support agents, or medical staff would be responsible for problem resolution. Services were performed as scheduled at the worker's office. The firm required the worker to attend staff, sales, and meetings with management to check in or review performance. There were no penalties if they did not attend. The firm required the worker to personally perform services. The worker could not hire helpers or substitutes and was not responsible for their payment.

The firm states that the worker did not provide or lease anything and had no job-related expenses. Customers paid the firm, and the firm paid the worker an hourly rate of pay with no access to advance pay. The firm carried worker's compensation insurance on the worker. The worker had no exposure to financial risk or loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided a company email account, CRM system, communications platforms, training materials and documentation, company workflows and procedures, and all other materials. The worker provided a home computer, phone, and internet connection. These along with appropriate computer hardware were the worker's job-related expenses. The worker did not lease any space, facilities, or equipment. The firm set the price of products sold.

The firm states that the worker performed similar services for other firms and did not need approval from the firm. Services were performed under the firm's name. The work relationship has since ended. The worker states that the firm did not provide the worker with any benefits. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms or advertise their services to the public. There were no non-compete agreements in place between the parties. The firm represented the worker to customers as an employee providing services under the firm's name. The firm ended the work relationship.

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments through a manager, gave the worker oversight and training, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. As stated by both parties, the worker did not provide anything significant or incur any financial risk or losses in the performance of their job duties. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 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. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.