

**SS-8 Determination—Determination for Public Inspection**

Occupation

02CSP Compliance Analyst

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 worker is seeking a determination of worker classification for services performed as a compliance analyst for the firm from May 2018 until January 2020. The worker received a 1099-MISC from the firm for 2018 and 2019. The worker feels that they were misclassified as an independent contractor because they received daily assignments from their supervisor with deadlines, the worker was not allowed to perform services for any other firm, and the laptop provided by the firm was to be returned to the firm upon termination of contract. The worker included a copy of contracts between the parties, a letter of recommendation from the firm, a letter regarding the contract's termination from the firm, information from the [REDACTED] Dept of Labor, and contractor exit logistics.

The firm states that it is a healthcare compliance analytics company that provides the healthcare industry with software products. The worker was requested to review and score alerts produced by the firm's platform. The firm believes that the worker was an independent contractor because they signed an independent contractor agreement with the firm. The firm included a copy of the written agreement between the parties, a description of the work performed, and timesheets submitted.

The firm states that the worker was provided with HIPAA mandated compliance training. The firm states that the worker was assigned to a discreet project on a contractual basis. The firm's internal senior compliance analyst determined the methods used to perform job duties. If the worker encountered any problems or complaints while working, the senior compliance analyst was responsible for problem resolution. The worker was required to provide the firm with weekly timesheets and weekly project status reports. The worker performed services at their discretion. The worker performed all services at their home office. There were no meetings required of the worker, and the worker was required to perform services personally. The firm was responsible for hiring and paying all helpers needed. The worker states that the firm provided training on how to navigate and access the firm's software system, how to retrieve assignments, how to record hours worked, how to report issues, and how to review, label, and score data. The worker received job assignments when they were uploaded by the supervisor to the service laptop provided by the firm. The supervisor determined the methods used for job assignments and assumed responsibility for problem resolution. All data was submitted by the worker to the firm using the service laptop. All job assignments were to be completed by 5pm on a daily basis by the worker. Services were performed at the worker's home. The worker attended orientation in the firm's office and all other meetings and additional trainings were virtual. The worker was required to perform services personally.

The firm states that they provided the laptop, and the worker provided their workspace. The worker did not lease any space, facilities, or equipment, and did not incur any expenses. The firm would reimburse the worker travel expenses if the worker was requested to travel. The worker was paid an hourly wage by the firm with no access to a drawing account for advances. The firm did not carry worker's compensation insurance on the worker, and the worker faced no economic loss or financial risk exposure. The worker's hourly rate was determined by the firm. The worker states that the firm provided a laptop and the worker provided office supplies. The worker did not lease anything, and the only expense incurred by the worker was office supplies. The worker was paid hourly by the firm. Customers paid the firm for services provided. The worker had the potential economic loss of loss or damage to equipment used.

The firm states that there were no benefits offered by the firm. The relationship between the parties could be terminated by either party without liability or penalty. The firm states that the worker performed similar services for other firms and did not need approval from the firm to do so. There were no non-compete agreements in place between the parties. The worker was not a member of a union and did not advertise their services to the public. The firm represented the worker as an independent contractor. The worker's contract ended, thus ending the work relationship. The worker states that they did not perform similar services for other firms. The worker states that the agreement between the parties prohibited the worker from performing services for other firms that would pose as competition. The worker was unaware of how they were represented to customers of the firm as they were only aware that they performed duties under the firm's supervision without representation to customers.

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## 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, coadventurer, 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 by virtue of the customers served, required the worker to report on services performed, 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks. The firm provided the worker with equipment needed for their job duties. The worker did not incur any expenses. 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. 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](http://www.irs.gov); Publication 4341.