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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
02LAW Law Staff	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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, a paralegal/legal assistant, submitted Form SS-8 and Form 1099-MISC related to services the Worker provided the Firm, a family law firm, from April 2017 to October 2017. For reasons set forth below, the Worker believes she was an employee of the Firm and that it should have sent her a W-2, not a 1099-MISC. The Firm submitted a responsive SS-8 stating the Worker was an independent contractor because she chose her own schedule and would inform the Firm of when she desired to work. The Firm also noted that it gave the Worker the option to work from all locations. The Firm submitted copies of the TY 2017 1099-MISC, along with nine unsigned, filled template-style documents entitled "Bi-Weekly Time Sheet" showing the Worker's name typed next to typeset "Contractor name."

The parties agree the Worker did not perform services for the Firm in any capacity before providing the services at issue here, and that there was no written agreement between the Firm and the Worker regarding the services provided by the Worker.
The parties generally agree the Firm trained the Worker on its office procedures and on the tasks needing completion, such as preparation of legal documents, and on the Firm's office procedures. The Firm gave work assignments to the Worker verbally and/or via email; the Worker states "I was delegated daily assignments by either [Firm Attorney] or [Firm Principal/Attorney] either verbally, by email, text, or written task list." While the Firm contends the Worker determined the methods by which assignments were performed, the Worker maintains "the Attorneys - both [Firm Attorney] and [Firm Principal/Attorney]" determined those methods.

The parties agree the Firm required the Worker to contact the Firm if problems or complaints arose, and the Firm was responsible for their resolution. The Firm required reports from the Worker as to the hours she worked. The Firm states the Worker chose her own schedule and work hours "between 9 a.m. to 6 p.m.," and the Worker submits that for the entirety of her time working for the Firm she worked Mondays, Wednesdays, and Fridays from 8:30 a.m. to 5:30 p.m.. The parties agree the Worker did all her work at the Firm's office and that she was not required to attend meetings. The parties also agree the Firm required the Worker to personally provide services. The Firm states that if substitutes or helpers were needed, the Worker would hire and pay them, and didn't need the Firm's approval to do so, but the Firm would not reimburse the Worker; the Worker maintains the issue of hiring substitutes or helpers was "N/A". Neither party alleges the Worker leased equipment, space, or a facility.

The parties agree the Firm provided the Worker with a computer and printer; the Worker states the Firm also provided "internet, office supplies, equipment, copy machine, postage equipment, workstation & furniture, telephone, etc.". The Firm states that the Worker incurred expenses for gasoline in performing services for the Firm; the Firm did not reimburse the Worker for the gasoline expense. The parties agree the Firm paid the Worker an hourly wage, that clients paid the Firm, and that the Firm did not grant the Worker a drawing account for advances. The parties also agree the Firm didn't carry worker's compensation insurance on the Worker.

The parties agree the Worker incurred no economic loss or financial risk, beyond the normal loss of wages, in providing services to the Firm. The Firm states the Worker established the level of payment for the services provided, while the Worker maintains "my hourly wage was decided upon hiring by the supervising attorneys, [Firm Principal/Attorney] & [Firm Attorney]."

The Firm states it did not know whether the Worker was a union member, performed similar services for others during the relevant time period, or did any type of advertising; the Worker responded "no" to each of those inquiries. The parties agree the Firm made no benefits available to the Worker, that their working relationship could be terminated by either party without liability or penalty, and that there was no non-competition agreement between them while the Worker was performing services or during any later period.

Neither party asserts the Worker assembled or processed any products at home, but they agree that, were that the case, the finished product would be returned to the Firm. The Firm says that it made no specific representation of the Worker to its clients, but that the Worker referred to herself as a paralegal; the Worker maintains the Firm represented her as "assistant" and "paralegal" and the Worker's email signature stated "Paralegal at the Law Offices of [Firm Principal]."

The Firm describes the end of its relationship with the Worker as "contract ended." The Firm presents no evidence of any contract between itself and the Worker and it responded "N/A" to SS-8 Part I, question 11. The Worker maintains her relationship with the Firm ended when "I was terminated."

Analysis

Generally, the relationship of employer and employee exists when the firm has the right to control and direct the worker who performs the services both in what the worker does and how the worker does it. It isn't necessary that the firm actually direct or control the worker, only that it has the right to do so.

US Treasury Regulation 31.3121(d)-1(c) provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than employer and employee is immaterial. So, if an employer-employee relationship exists, any oral or written contractual designation of the employee as an independent contractor is without merit and must be disregarded in the context of federal employment tax worker classification. Instead, the actual working relationship between the parties is controlling; whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

The Firm assigned the Worker's tasks and assumed responsibility for problem resolution. The Firm also required the Worker to personally provide services. And it is reasonable to presume the Firm -- a law practice that, by nature, deals with highly confidential information and is subject to considerable substantive, procedural, administrative, and ethical boundaries and regulation, as well as potential malpractice claims, disbarment, and liability for errors of non-attorney staff -- was interested in the methods by which the Worker accomplish her assigned tasks, as well as in the results. At its February 2020 Midyear meeting, the American Bar Association's House of Delegates adopted this definition of paralegal: "A paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible." These facts support the conclusion that 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. The Worker's education, work experience, and work ethic may have resulted in the Firm not frequently exercising its right to direct and control the Worker; however, the facts evidence the Firm retained the right - the obligation, even -- to do so. These facts are highly indicative of an employer-employee relationship.

The Firm states the Worker invested no capital and incurred no economic loss or financial risk in working for the Firm. With the hourly rate of pay arrangement the Worker could not realize a profit or incur a loss. While workers who can realize a profit or suffer a loss as a result of their services are generally independent contractors, workers who cannot are generally employees. Thus, the facts here are indicative of an employer-employee relationship.

Neither party presents evidence to show the Worker was engaged in an independent enterprise; rather, the legal assistant and paralegal services provided by the Worker to the Firm were an integral component of the Firm's law practice. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence suggesting 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 facts and analysis, we conclude 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 of the Firm during the relevant time period, and not an independent contractor operating a trade or business. Accordingly, the Worker is classified as an employee of the Firm for employment tax purposes.

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