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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
PDP - Publishers / Editors / Producers	☒ 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 copy editor from July 2022 until July 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-Nec from the firm and the state unemployment board found them to be an employee of the firm.

The worker believes that they were an employee of the firm due to the firm's extensive behavioral and financial control over the worker's job duties. Additionally, the state board determined the worker to be an employee of the firm and eligible for unemployment benefits, which went uncontested by the firm. The worker provided services for the firm from 2018 through 2022 through a staffing agency where they were considered to be an independent contractor and had minimal oversight with autonomy to determine their own hours and when they worked. This differed greatly from the work relationship in 2022 through 2024. The worker attached a copy of a non-disclosure agreement the firm required them to sign in 2022 as well as sample reports. The worker also attached copies of a handbook from the firm which detailed the worker's schedule and responsibilities, and screenshots of the worker's application profile which shows the worker's contact information and availability hours.

The firm states that they are a leading global fitness and wellness company. The worker provided services for the firm as a caption and quality control editor, responsible for editing closed captioning for the firm's classes and programs. The firm classified the worker as an independent contractor because the worker performed services for a max of 20 days monthly, received a daily rate of pay for which they invoiced the firm, incurred job-related expenses above and beyond a secure laptop and access to internal systems, and the worker chose where to provide their services and their work schedule.

The firm states that they did not provide training for the worker's role as a caption quality control editor. The senior manager provided job assignments to the worker through a cloud-based messaging platform. The worker determined the methods by which job duties were performed. No reports were required of the worker. Services were performed as available at the worker's office. There were no meetings required of the worker. 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 worker states that the firm provided the worker with a written team playbook which detailed their work responsibilities and trained the worker on new applications or required procedures as needed. The firm's managers provided job assignments to the worker through emails and internal communications in addition to their regularly scheduled responsibilities. The managers determined the methods by which job duties were performed and assumed responsibility for problem resolution. The worker was required to complete reports, examples of which they attached to their determination request. Services were performed as scheduled, as needed, and as available, and involved quality control, troubleshooting, editorial guidance, and documentation. The firm required the worker to attend staff meetings, training meetings, and meetings with external vendors. There were no penalties incurred if they could not attend these meetings. The worker had no hiring authority.

The firm states that they provided the worker with a secure laptop with limited access to necessary company systems. The worker provided all other supplies and equipment. There were no job-related expenses incurred by the worker. Customers paid the firm. The firm paid the worker a set daily rate of pay with no access to advance pay. The worker had no exposure to financial risk or loss while working for the firm. Both parties negotiated the rate of pay for services performed. The worker states that the firm provided laptops, related laptop equipment, content, and internal application access. The worker provided internet service and did not lease any space, facilities, or equipment. The worker's internet service and equipment replacement costs were their only job-related expenses. The firm would reimburse the worker for equipment replacements as needed. Customers paid the firm. The firm paid the worker a daily rate that was paid monthly. The worker could not request advance pay. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed and the price of products sold.

The firm states that no benefits were provided to the worker. The worker did not advertise their services to the public. The firm did not know if the worker provided similar services for other firms, but it was not prohibited by the firm. The work relationship ended when the job was completed. The worker states that the firm provided the worker with a subscription to an application as a benefit, but this was needed for troubleshooting services. 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. There was an NDA between the parties that prevented the worker from sharing internal information with third parties, but no non-compete agreements. Services were performed 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 of providing fitness and wellness services. The firm provided work assignments by virtue of the firm's captioning needs, required the worker to report on services performed as evidenced through the worker's provided reports, gave the worker a handbook to follow for their job duties, and would not allow the worker to hire helpers or substitutes. 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. As stated by both parties, the worker did not incur any job-related expenses or have exposure to financial risk. 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. Additionally, the firm reimbursed the worker for integral expenses to their job. Based on the daily 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.