

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.30 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a consulting company for physicians to start a concierge medicine practice. The firm assists with enrolling existing new patients of a physician's practice into the concierge program. The firm then manages the enrollment. The worker in this case was engaged by the firm to perform services as a Transition Manager. The worker's responsibility was to enroll a physician's patients into the concierge program. The firm provided a copy of its employment offer regarding this position, indicating that it was a probationary position for approximately two months, with the opportunity to change to full time employment. From the information provided, it appears that the work relationship did not go past the probationary time period. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report those monies she received for her services as non-employee compensation.

The worker received software training, and was provided with a binder with instructions on how to perform the services. Work assignments were based on new growth and contracts that the firm received. The firm determined the work methods by which to perform the services. The worker was required to contact the firm regarding problems and complaints that needed resolution. The worker was required to perform her services personally, at the physician's office. She was required to provide the firm with End of Day (EOD) reports each day she worked.

The firm provided the worker with a laptop and computer, and all office supplies needed to perform the services. All other items were provided by the physician's office. The firm paid the worker on a salary basis for her services, and clients made payment to the firm for services rendered. The worker did not incur work related expenses, nor did she incur economic loss or financial risk with regard to the services she performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did she advertise her services to others while engaged by the firm. The work relationship was termed at will employment, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm, and she represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes.

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