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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Managers/Supervisors/Administrators	☒ 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 submitted a request for determination in connection with services performed for the firm in 2024 as a product manager. Services performed included developing roadmaps, identifying customer needs, defining products features and requirements, etc. The worker filed Form SS-8 as they believe they received Form 1099-NEC in error. The worker believes they were an employee as they received directives from the firm. The worker performed services on a full-time basis, used company tools, was provided with a company email, and attended meetings. The worker stated they had previously performed similar services for the firm as an unpaid intern.

The firm's response stated its business is technology research. The worker was engaged as a product manager. Services performed included assisting with product positioning and outreach. The worker was classified as an independent contractor as the worker controlled how the services were to be performed, used their own tools, and could perform similar services for others. The firm stated there was a written agreement between the parties stating that this was temporary employment, the worker would not be eligible for benefits, and the services would be performed remotely.

The firm stated there was no formal training provided to the worker. The worker received work assignments based on project scopes. The worker determined the methods by which those assignments were performed. If problems or complaints arose, the work would contact the project owner. The project owner would be responsible for resolution. The firm did not require the worker to complete any reports or attend any meetings. Services were performed remotely on an as-available basis. The firm did not require the worker to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated they received instructions from the firm's manager regarding the services that were to be performed. The firm provided work assignments and determined the methods by which those assignments were performed. The firm was responsible for problem resolution. The worker was required to attend staff and online meetings. Services were performed on a regularly scheduled basis. The worker was required to personally perform services.

The firm stated they provided the worker with limited access and email. The worker provided a laptop, phone, and internet. The worker did not lease space, equipment, or a facility. The worker incurred the job-related expense of internet. Customers paid the firm. The worker was paid an hourly rate of pay. The worker could not request advance pay. The worker took a financial risk and could suffer a financial loss by the worker's overhead expenses. Both parties mutually agreed to the rate of pay for the services provided. The firm set the rate for the products sold. The firm did not carry worker's compensation insurance on the worker. The worker stated the firm provided training materials and software access. The worker did not provide any of the supplies, equipment, or materials that were needed to perform services. The worker did not incur any job-related expenses in the performance of the services for the firm. The worker was paid a salary rate of pay. The worker did not take a financial risk and could not suffer a financial loss performing services. The firm set the rate of pay for the services provided.

The firm stated there were no benefits extended to the worker. Either party could end the work relationship without penalty. The worker performed similar services for others during the term of the work relationship. The worker advertised their services. The firm does not introduce the worker to their customers. The worker is still performing services for the firm. The worker stated they received the benefit of personal days. The worker did not perform similar services for others during the term of the work relationship. The worker did not advertise their services. Services were performed under the firm's business name. The worker 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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to an oral 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.

A worker who is required to comply with another person’s instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. In this case, the firm provided work assignments by virtue od customers servced and ultimately 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. The need to direct and control a worker and their services should not be confused with the right to direct and control. The worker received payment for the services provided from the firm directly. The worker provided their services on behalf of and under the firm’s business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customers. This gave the firm the right to direct and control the worker and their services in order to protect their financial investment, their business reputation, and their relationship with their customers.

Payment by the hour, 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 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. The worker did not provide anything or have any major investment in the firm's business operations. Based on the hourly 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 penalty 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.