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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation Managers/Supervisors/Administrators	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 submitted a request for determination in connection with services performed for the firm in 2025 as a sales and accounting manager. Services performed client relationship management, sales development and execution, CRM management, collaboration, and strategy. The worker filed Form SS-8 as they believe they were misclassified. The worker believes they were an employee as they did not bring any additional business to the firm. The worker was obligated to and employed by the firm.

The firm's response stated its business performs consulting activities related to software programing and business intelligence. The worker was engaged as a sales and account manager. Services performed included generating new business opportunities, maintaining client relationships, and supporting the revenue growth objectives of the firm. The worker was classified as an independent contractor as it was mutually agreed by both parties that the worker would perform services on a contract basis, which would be a probationary basis, and that no taxes would be withheld from their earnings and received Form 1099-NEC.

The firm stated there was no specific training or instructions provided to the worker. The worker was given client information and was expected to find further clients and business leads. The firm did not provide work assignments. Problem or compliant resolution was not applicable due to the nature of the worker's work which consisted of internet search and calls. The firm did not require the worker to complete reports. However, the firm did expect the worker to keep them updated on the progress of their work. The firm did not require the worker to personally perform services. Services were performed remotely based on the worker's schedule and convenience. The worker could hire substitutes or helpers; approval from the firm was not required. However, the firm stated due to nature of the worker's work it did not necessitate hiring any helpers. The worker stated they learned the services as the work relationship progressed. The worker would have virtual meetings with clients. The worker received work assignments through other various positions within the firm. The methods by which those work assignments were performed were determined amongst other workers. If problems or complaints arose, the firm would be contacted as well as responsible for resolution. The firm required the worker to attend meetings. Services were performed on an as-needed basis. The firm did not require the worker to personally perform services The worker could not hire substitutes or helpers.

The firm stated they provided the worker with a laptop. The worker provided a phone, Wi-fi, and any other supplies the worker thought they needed to perform services. The worker did not lease space, equipment, or a facility. The worker did not incur any job-related expenses in the performance of the services for the firm. Clients paid the firm. The worker was a paid a lump sum 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 did not carry workers' compensation insurance on the worker. The worker stated they received a salary rate of pay.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. There were no agreements prohibiting competition. Services were performed under the firm's business 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, 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.

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. In this case, the firm provided work assignments by virtue of customer served 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 their right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

While the firm stated they provided the worker with freedom of action as to when they performed services, this in and of itself does not determine the worker’s status as an independent contractor. The whole relationship needed to be analyzed to determine the worker’s correct employment tax status. An important factor of determining a worker’s status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

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. As acknowledged by the firm, the worker did not take a financial risk and could not suffer a financial loss by performing services. Based on the lump sum 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. 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.