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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
06AAS Aides/Assistants	[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 submitted a request for a determination of worker status in regard to services performed for the firm from July 2017 to September 2017 as a physician assistant. Work performed included working in the critical care setting, under the supervision of a physician, to provide critical care and complete appropriate procedures to patients in the ICU. From June 2016 to June 2017, the worker was a full-time employee for the firm. She resigned from full-time employment and continued to work on an as-needed basis in the critical care setting only. The services performed by the worker did not change. The firm issued the worker Form 1099-MISC and Form W-2 for 2017. The worker stated it is unclear why Form 1099-MISC was issued as all other income, including prior additional as-needed hours, was reported on Form W-2. The worker remained on the firm's malpractice policy for the entire work relationship. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The firm's response states its business is healthcare, providing medical service to patients on an outpatient and inpatient basis. The worker was engaged as a physician assistant helping treat inpatient hospital patients. The worker performed the same duties from June 2016 to June 2017. As a full-time employee she worked both inpatient and outpatient services. The worker gave her notice but stated she would like to continue to work, working only inpatient services at the hospital, on an as-needed basis. There was no written agreement between the parties.

The firm stated that during full-time employment, computer training courses were taken by the worker; the work schedule was given at the time of hire. For services beginning July 2017, administration emailed dates available for work. The worker chose whether to accept or decline work offers. The worker determined the methods by which assignments were performed. Administration was contacted if problems or complaints arose. Administration was responsible for problem resolution. Patient medical record notes were required. As an employee, the worker worked full-time. Beginning July 2017, the hospital schedule was either 8 am to 6 pm or 7 am to 5 pm. Services were performed in the hospital not owned by the firm or worker. Meetings were not required. The firm required the worker to personally perform services. The firm's administration was responsible for hiring substitutes or helpers. The worker stated the firm determined the methods by which assignments were performed.

The firm stated that during full-time employment, it provided a laptop computer. After July 2017, it did not provide anything. The worker provided her stethoscope. The hospital provided on-site computers and medical equipment. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the firm. Customers (patients) paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The worker did not establish the level of payment for the services provided.

The firm stated the work relationship could be terminated by either party without liability or penalty. The worker did not perform similar services for others or advertise. There was no agreement prohibiting competition between the parties. The firm represented the worker as a provider to its customers (patients). Services were performed under the firm's business name. The as-needed work relationship ended in September 2017.

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.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

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. The firm provided work assignments by virtue of the patients served and it 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. The firm acknowledges it originally classified the worker as an employee in connection with the same services performed. 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, 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 incur economic loss or financial risk. Based on the hourly 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 for the entire work relationship, 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.