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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
AAS - Aides / Assistants	☒ 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 teacher assistant from January 2024 until October 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC and that they were misclassified by the firm as an independent contractor.

The worker believes that they were an employee of the firm because they do not hold an independent contractor’s license, they do not have liability insurance, and they were a college student at the time they worked for the firm. There were no written or verbal agreements between the parties.

The firm states that they operate a public charter school serving grades TK-12. The worker provided services for the firm as a primary classroom prep assistant, responsible for implementation of extracurricular programs at the school and one-time classroom setup services. The firm classified the worker as an independent contractor because the worker was originally contracted to provide project-based support to the school through the college where the worker was enrolled as a student, and this transitioned to one of an independent contractor agreement to complete the project after the arrangement with the college ended. The firm provided a copy of the Independent Contractor Agreement between the parties, invoices from the worker to the firm, and time sheets from the worker.

The firm states that they did not provide any training or instruction to the worker. The classroom teacher to whom the worker rendered services provided job assignments to the worker in person. The worker determined the methods by which job duties were performed. If the worker encountered any problems or complaints, the firm and worker mutually resolved issues. No reports were required of the worker. Services were performed for twenty hours weekly for five months at the firm’s premises. The firm did not require the worker to attend meetings or to perform services personally. The worker could hire helpers or substitutes as long as they ensured compliance with applicable health and safety requirements for working at a school. The worker would be responsible for paying helpers or substitutes and would not be reimbursed. The worker states that they did not receive training from the firm. The firm’s teachers provided job assignments to the worker in person and determined the methods by which job duties were performed. If the worker encountered any problems or complaints, they were required to contact the principal for problem resolution. Services were performed for 20 hours weekly at the firm’s school premises. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they did not provide anything, and the worker provided a computer. The worker did not lease any space, facilities, or equipment. Per the contract between the parties, the worker was responsible for any job-related expenses that they incurred during the performance of their job duties. There were no expenses reimbursed by the firm. The firm paid the worker an hourly rate of pay with no access to advance pay. The firm did not carry worker’s compensation insurance on the worker. If the worker employed assistants or substitutes, they would face a financial risk since the firm only agreed to a fixed number of hours for services to be rendered. The worker set the rate of pay for services performed. The worker states that the firm provided a classroom, and the worker did not provide or lease anything. There were no job-related expenses incurred by the worker. The worker had no exposure to financial risk or loss while working for the firm. The firm set the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The firm does not know if the worker provided similar services to other firms, but the worker was free to do so, and there were no non-compete agreements between the parties. Services were performed under the worker’s name. The contract ended, bringing the work relationship to a close. The worker states that they did not perform similar services for other firms or advertise their services to the public. The worker is no longer performing services for the firm.

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.

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 services performed by the worker were integral to the firm’s business operation as a school. The firm provided work assignments by virtue of their classroom needs, required the worker to report their hours worked on timesheets and invoices (per the contract), and 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.

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. 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. 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 as a school. 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.