

SS-8 Determination—Determination for Public Inspection

Occupation

06MPX Medical Practitioners

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 initiated the request for a determination of his work status as a chiropractor in tax years 2019 to 2020, for which he received Form 1099-MISC. The firm's business is described as a chiropractic office performing post motor vehicle accident services for injured parties.

The firm's response, signed by the administrator, describes the firm's business as a Chiropractic clinic where patients that have been involved in car accidents, falls, or injured at work, but not limited to these situations, are treated. The worker provided services as Chiropractor. In this capacity he would examine patients, perform therapy on patients, keep charts updated, order MRI/XRAYS when needed, explain exam/imaging results to patients, refer to orthopedic/Pain Management if needed, sign all exams, narratives, legal documentation and doctor's excuse for each patient as needed.

Both parties acknowledge a Contract; however, the copy submitted by the firm was not signed by the worker. The firm stated the worker did not sign the contract at the time of hiring stating that the worker was waiting for his attorney to review it. The worker indicated he was presented with a back-dated agreement, which he refused to sign.

The worker stated he was given training and instructions as to what specific forms to use and which doctors and hospitals he should refer patients to. The job assignments were dictated by the firm. According to the firm, the position was specifically described in the contract and were explained in detail to the worker at the time of his interview on 05/28/2019, at which time he agreed to all terms. The worker was given a run down of the day based on the patients coming into the clinic that day. Both parties concur the worker determined the methods by which he performed the services; and, that any problems or complaints encountered by the worker were directed to the firm's administrator and/or the office manager for resolution. The worker's services were rendered Monday and Wednesday on the firm's premises. The worker was required to perform the services personally.

The firm and worker acknowledge the firm provided all clinical equipment, including forms, tables, paper, therapy machines, and BP unit. The worker furnished nothing and he did not lease equipment, space, or a facility. The worker was paid an hourly wage. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm's administrator established the level of payment for services provided.

The firm and worker responded that the benefits extended to the worker consisted of sick pay and paid holidays. Either party could terminate the work relationship without incurring a liability or penalty. The worker was performing same or similar services for others during the same time frame; however, it was different days and a different clinic. The worker stated he was terminated after he refused to sign a back-dated contract. The firm indicated the worker quit on February 19, 2020 because he refused to sign the contract and was demanding a W-2 form instead of the 1099-MMISC. He was paid \$XXX.00 at the time of his departure as a gesture of good faith.

The firm provided a copy of the Contract dated June 5, 2019 which was signed by the Administrator and office manager: Excerpt: 'Contract chiropractor must examine patients, perform therapy on patients, keep charts updated, order X-rays or MRI, when needed. Contract Chiropractor will also be responsible to explain exam results to patients, refer to orthopedic doctor for further treatment/evaluation if needed and sign all narratives, legal documentation and doctor's excuse for each patient when needed.

2.2. The Contractor shall notify the Company of any change(s) to the Contractor's schedule that could adversely affect the availability of the Contractor, whether known or unknown at the time of this Agreement, no later than 2 days prior to such change(s). If the Contractor becomes aware of such change(s) within the 2 days period, the Contractor shall promptly notify the Company of such change(s) within a reasonable amount of time. Any hours that are not completed must be made up to the discretion of both Parties.

2.3. The work performed by the Contractor shall be performed at the following rate: \$ZZZ.00 per hour. The Company shall remit payment to the Contractor within 1 day of ending biweekly shift

2.4. The Company shall not be responsible for federal, state and local taxes derived from the Contractor's net income or for the withholding and/or payment of any federal, state and local income and other payroll taxes, worker's compensation, disability benefits of other legal requirements applicable to the Contractor. The Company will issue Tax Form 1099 to all employees at the end of the year.'

Analysis

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor pursuant to an 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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 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.

CONCLUSION

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.

Please see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.

Please go to www.irs.gov/notice for Notice 1155, Disaster Relief is Available from the IRS