

SS-8 Determination—Determination for Public Inspection

Occupation

Medical Practitioners/Scientists/Therapists

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 her work status as an epidemiology intern in tax years 2019 and 2020, for which she received Form 1099-MISC. The firm's business is described as a graduate school medical education accreditation.

The firm's response states the firm is responsible for the accreditation of graduate medical education programs. The worker provided support for research and evaluation of the impact of key firm-initiatives on improving population health. The worker was a summer intern for two summers (2019 and 2020).

The firm and worker acknowledge the worker was given direct training and instructions from the Director of population health research and educational outreach. The job assignments were conveyed verbally in-person or by telephone, via email, or chat services. The intern/worker under the guidance of the director (the worker's supervisor), determined the methods by which her services were performed. Any problems or complaints encountered by the worker were directed to the firm's director for resolution. The worker's services were rendered 8:30 to 4:45 at the firm's headquarters and then later at the worker's home when Covid-19 forced the closure of the office. The worker was required to perform the services personally; any additional personnel were not hired and paid by the worker.

The firm and worker concur that the firm provided a laptop computer and office supplies; the worker furnished nothing. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage. 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 worker's hourly wage was determined by the firm.

Both parties agree there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The summer internship ended per the signed agreement.

Per the Summer Internship Agreement (excerpt)

The firm is seeking a summer intern to provide support for research and evaluation of the impact of key firm-initiatives on improving population health. The internship will focus on examining population health efforts to address social determinants of health and community health needs, particularly related to graduate medical education. The Primary Duties and Responsibilities: Work with the Director, Population Health Research and Educational Outreach in the analysis and preparation of materials related to population health trends; Conduct literature reviews and prepare research briefs on key issues; Assist in the preparation of research materials for abstract, poster, and manuscript submission; Maintain documentation of all data sources. The position requires the significant use of standard office equipment, such as a computer, keyboard, mouse, photocopier, fax machine, telephone, etc.

The firm provided copies of the bi-weekly time sheets and the invoice for the same time frame and hours worked. The firm provided copies of the engagement letter outlining the terms of the internship including reference to the job description, the hourly fee, the submission of an invoice on a bi-weekly basis, and the confidential information she may have access to during this summer arrangement.

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.

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.

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.

Conclusion:

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. 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 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. 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.