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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Medical Practitioners/Scientists/Therapists	☒ 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 licensed registered dental hygienist from February 2024 until December 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because under state law, all licensed registered dental hygienists can only perform services under the supervision of a licensed dentist. There were no written or verbal agreements between the parties. The worker attached copies of report examples.

The firm states that they are a comprehensive dental care practice. The worker provided services for the firm as a dental hygienist, responsible for performing dental cleanings, taking radiographs, and providing education to the firm's patients. The firm classified the worker as an independent contractor as requested by the worker because the worker was providing services on a temporary fill-in basis and did not want to be a W-2 employee. The firm offered the worker various days to work, and the worker could accept or reject the dates based on their schedules working elsewhere.

The firm states that they instructed the worker on the location and use of equipment as well as training on the software system. The firm owner provided job assignments to the worker in person. The worker would confirm their plan to attend work via text. The firm owner determined the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm owner for problem resolution. There were no reports required of the worker. Services were performed as available at the firm's premises. There were no meetings required of the worker. The firm required the worker to personally perform services. The worker could not hire helpers or substitutes and was not responsible for their payment. The worker states that the firm instructed them to see a list of patients with scheduled appointments for the day. The firm provided job assignments to the worker in person, determined the methods by which job duties were performed, and assumed responsibility for problem resolution. The worker was responsible for completing reports for the firm. Services were performed as scheduled at the firm's premises. The worker had no hiring authority.

The firm states that they provided a computer, chair, dental instruments, and disposable paper products. The worker provided scrubs, a jacket, shoes, a headcover, loupes, and an eye shield. The worker did not lease any space, facilities, or equipment and had no job-related expenses. Customers paid the firm. The firm paid the worker a daily rate of pay with no access to advance pay. The firm carried worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss in the performance of their job duties. The firm set the rate of pay for services performed and the price of products sold. The worker states that the firm provided all supplies, equipment, and materials. The worker did not provide or lease anything and had no job-related expenses. The firm set the rate of pay for services performed and price of products sold.

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 worker performed similar services for other firms and did not need approval from the firm. There were no non-compete agreements in place between the parties. The worker advertised their services to the public through word of mouth. The firm represented the worker to customers as an employee performing services under the worker's name. The worker moved away and ended the work relationship. The worker states that they did not perform similar services for other firms or advertise their services to the public. The firm represented the worker to customers as an employee providing services under the firm's name. The worker 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, 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.

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 as a dental office. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed as evidenced by documentation the worker provided, and assumed responsibility for problem resolution. Additionally, it is illegal under state law for the worker to perform their services without the supervision of a dentist, adding another element of the firm's behavioral control. 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. As stated by the firm, the worker had no financial risk and did not incur any job-related expenses. Based on the daily 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 dental office. 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.