

**SS-8 Determination—Determination for Public Inspection**

Occupation

07ESW.7 Enforcement/Security

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 firm is a government agency in charge of providing medical services to inmates. The individual provided medical services for the firm for the year 2009 and the monies he received for the services he provided were reported on Form 480.6B. He provided his services in prior years and received Forms 480.6B and Form W-2.

The worker was hired for the position after completing a job application. The worker stated he received medical emergency room training from the firm. The worker received his assignments from the firm and the firm determined the methods in which the assignments were performed. His responsibilities included: providing medical evaluations and treating patients during his shift. He was required to complete and manage medical files. He provided these services on the firm's premises and it was understood that he provide these services personally. The worker attended meetings at the central level. If problems or complaints arose as a result of the worker's services, the medical director was responsible for problem resolution. If substitutes or helpers were needed it was the firm's responsibility to compensate the helpers.

The firm stated that the worker was able to provide medical services for others and he did not receive benefits. He provided his services when he was available and believed him to be an independent contractor.

The firm provided the worker with all the necessary supplies and equipment the worker needed to provide his services. The worker stated that he accrued vacation time but was unable to take it and received compensation for his time. The worker did not need to purchase or lease any significant equipment used in providing his services. The worker maintained that the firm determined the level of payment and the and the worker received an hourly wage.

The worker stated he did not advertise his services to maintain a business of a similar nature while providing his services for the firm. The worker provided his services under the firm's business name and was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker was terminated.

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## Analysis

The worker had the skills necessary to provide his services. 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 or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided his services.

The firm instructed the worker regarding the performance of his services. A worker who is required to comply with another person's instructions about when, where, and how he 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. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments.

The worker rendered his services personally. 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. The worker provided his services under the firm's supervision.

The worker provided services for the firm in the firm's name and did not perform his services in the name of his own business. He did not have a financial investment in the firm's business and could not have incurred a business profit or business loss. The worker provided his services under the firm's name, for the firm's patients, and his work was integrated into the firm's business. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.