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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
06AAS.53 Aide/Assistant	☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

[redacted]

The worker initiated the request for a determination of her work status as a medical assistant in tax years 2014 and 2015. In this capacity she took vitals, made appointments, did prior authorizations through insurance for medications and procedures, pulled and prepared charts for the next day or review, and answered phone. The firm's business is described as a primary care doctor's office. The worker stated she was hired off an 'externship' from school.

The firm's response was signed by [redacted]. The firm's business is described as medical doctor. The worker performed services as light clerical transcription services and filing of related patient files. In a telephone call, the firm stated the worker did work at the firm's location through an 'externship'; she was learning the clerical piece of the business and the firm was teaching her how to take vitals as part of her education. He was looking for help and hired the worker; she did not do any transcription services for him. She scheduled patients, answered the phone, boxed up old files (put boxes together, organized files, and labeled them for storage). She also did filing and associated mail/medical test reports with patient files for his review, and wrote up letters for him. He acknowledged the worker had a key to the office in the event the office manager/his wife may not be able to come in to open the office and get things ready for the day, the worker was able to do this.

The firm and worker agreed she was not given specific training and instructions because she had worked in the office during the school externship. The work assignment was to organize the piles of files accumulating in the office; the worker determined the methods and was responsible for the service. The worker kept her time records for services rendered since there was no time clock or computer tracking log in. The services were rendered at the firm's business location. The worker was required to perform the services personally.

The firm provided everything needed for worker to do her job. The worker furnished nothing; she did not lease equipment and did not incur expenses in the performance of the job. The worker was paid an hourly wage; the customers/patients paid the firm.

There were no benefits extended to the worker. 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.

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.

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.

We have considered the information provided by both parties and have applied the law 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. 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

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.