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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
06MPX Medical Practitioners	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 submitted a request for a determination of worker status in regard to services performed for the firm from January 2017 to September 2017 as a doctor. The services performed included examining and adjusting the firm's patients; organizing the office and marketing the firm. The firm issued the worker Form 1099-MISC for 2017. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC. Services were performed under an employment agreement.

The firm's response states it is a chiropractor business. The worker was engaged as a chiropractor working under the limitations of her license. The firm believes the worker was an independent contractor as she was hired as a professional licensed doctor.

The firm stated the worker performed duties she was licensed for. Patients were scheduled at her availability during regular office hours. The worker determined the methods by which assignments were performed. If problems or complaints arose, the firm was contacted and assumed responsibility for problem resolution. Reports included notes on services performed. The worker set her schedule to see patients during operating hours. Services were performed at the firm's premises. The firm required the worker to personally perform services. The firm was responsible for hiring and paying substitutes or helpers. The worker stated the firm's human resource personnel provided two days of training. She was responsible for one of the firm's offices. Reports also included marketing emails and final narrative reports for attorneys. She followed the firm's office hours, Monday through Friday, and any additional time for marketing. Her daily routine consisted of opening the office, prepping for patients, caring for patients, entering notes in the firm's computer software, and locking up the office. Marketing meetings were required at the firm's office.

The firm stated it provided all equipment and supplies. The worker did not lease equipment, space, or a facility. The worker incurred the unreimbursed expense associated with her malpractice insurance, licenses, and continuing education expenses. Customers paid the firm. The firm paid the worker a lump sum of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. Insurance contracts with the firm established the level of payment for the services provided. The worker stated the firm also provided furniture, software, a computer, and company credit card. Marketing costs were paid by the firm. She provided three hand tools and an extra adjusting table. The firm paid her commission; it guaranteed her a minimum amount of pay.

The firm stated there were no benefits made available to the worker. The work relationship could be terminated without penalty. There was no agreement prohibiting competition between the parties. The worker performed similar services for others. The worker did not advertise. The firm represented the worker as a contractor to its customers. The work relationship ended when the worker was fired. The worker stated the benefits of paid vacations, paid holidays, sick pay, personal days, bonuses, insurance benefits, and training were made available to her. She did not perform similar services for others. The written agreement expected her position to be full-time with the firm. She could not engage in or carry on or be employed by, directly or indirectly, any other business or profession without the firm's written consent. Advertising included networking and promotions with marketing materials supplied by the firm. The firm represented her as an employee to its customers. Services were performed under the firm's business name. A copy of the firm's termination letter documents it would pay her for the 30-day notice period.

The worker provided a copy of her employment agreement with the firm effective April 1, 2017. The signed agreement states, in part, she was engaged to practice chiropractic medicine on behalf of the firm during regularly scheduled hours. She would devote full-time to being responsible for attending to patients, medical record keeping, and fulfilling professional educational requirements. The firm would pay her a fixed monthly rate of pay for professional services consisting of examinations, office visits, x-rays, and physical therapy. Monthly or quarterly bonuses could be paid when deemed appropriate by both parties. The worker would continue to receive full compensation for any period of illness or incapacity during the term of the agreement. The firm had exclusive authority to determine the fees, or a procedure for establishing fees, to be charged to the firm's patients, even if such patients were treated by the worker. All fees paid would remain the firm's property. The firm retained the right to determine which professional would treat its patients. The worker would maintain patient records consistent with the firm's policies. The firm had the authority to establish from time-to-time the policies and procedures to be followed by the worker. The firm would furnish the worker with an office, technical and secretarial assistance, reasonable books and publications associated with the its business, and such other facilities and services suitable to the worker's professional position. The worker could take a maximum of two weeks paid vacation during each fiscal year at times to be determined in the manner most convenient to the firm's business. In addition, the worker could have other days off as determined by the firm. During the term of the agreement and for a period of two years after termination, the worker would not, directly or indirectly, engage in the practice of chiropractic medicine within a five mile radius of the firm's office location; solicit any of the firm's patients; refer any such patients to others for care.

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, coadventurer, agent, or independent contractor must be disregarded.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Therefore, a statement that a worker is an independent contractor pursuant to a written 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. The firm required the worker to perform services in accordance with its policies and procedures, required her to perform services during its regular office hours, and required her to report on problems or complaints so it could assume responsibility for problem resolution. 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. 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. 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 acknowledged by the firm, the worker did not incur economic loss or financial risk. Based on the fixed monthly 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. 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.