

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

Occupation

02OFF Office Workers

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**

Information provided indicated the firm is an operating beauty salon. The worker stated she performed services in 2017 as a receptionist. The firm reported the income on Form 109-MISC. The firm indicated she was a paid internship when she was in Cosmetology School and shadowed a master stylist to gain knowledge of cosmetology. The firm stated they did not provide her with a schedule, she came in at will to shadow and gain knowledge, in hopes she would become a stylist for the salon. The firm indicated she wasn't trained, but simply shadowed another stylist. Services were performed on the firm premises, after school. She was required to perform services personally. The firm stated she was paid by the hour, the customer paid the firm. The firm stated she was hired and later terminated. She would clock in upon her arrival and clock out when she would leave for the day. Either could terminate the work relationship without incurring a penalty or liability. She was represented as an intern. The firm indicated she left to move to another location.

The worker indicated she performed services as a receptionist and as an apprentice. She answered the phone, scheduled appointments, assisted with hair, inventory etc. She attended hair cutting classes, trained how to answer the phones, how to dress, etc. The worker indicated she had assigned hours, Saturday the hours were nine to four, other days varied, some ten to seven. All work performed on firm premises. Staff meetings attended when called. She performed her services personally. For the receptionist work the firm provided all equipment, and materials. For her internship she provided her own scissors, everything else provided by the salon. She indicated she was paid by the hour. The customer paid the firm. She indicated she quit.

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## Analysis

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We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## 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. The worker performed services under a paid internship, meaning she was in training to learn a skill. It does not mean she was skilled and owned her own business to provide those services. Such as a doctor does their internship at a hospital, they are still paid for the services performed.