

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Assistant

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 worker initiated the request for a determination of her work status as an assistant to the firm's owner in tax years 2017 to 2019, for which she received Form 1099-MISC. Her duties included but were not limited to: Receptionist: answering phones and scheduling appointments for the owner and other stylists that rent booth space; greet clients when they arrive; cash out clients, accept cash, checks (made out to the owner), or credit card and all receipts go directly in the owner's money bag; if the client purchases any merchandise, ensure the merchandise is logged and accept payment for such; arrange the client's next appointment; monitor the salon's Facebook page, and make appointments for owner or stylists who rent a booth; clean and straighten the waiting area; call all of the owner's clients on a daily basis as a reminder of appointment; give owner a personal supply list for tissues, toilet paper, office supplies, etc.; fold and restock towels throughout the day; plug/unplug wax machine and restock waxing supplies; weed out and renew magazines regularly; cleaning the shop, which including dusting, mopping, cleaning bathroom, cleaning fridge and microwave, cleaning product shelves (including removing items and replacing them), wiping hood dryers and shelves, wiping down shampoo chairs and bases, wiping down shampoo bowls, and taking out the trash. The bookwork consisted of: collecting booth rent from renters and log it weekly in owner's client book; log all merchandise sold, including date, product, retail price, and stylist; write checks to renters for their commission of product sales; pay all salon bills, including rent, dumpster fee, utilities, insurance, phone/internet, taxes, and licenses. The firm's business is described as a hair salon.

The firm's response, signed by the owner, indicated the firm's business is a hair salon and the worker provided services as a shampoo technician.

The worker stated she was given basic training by an independent cosmetologist. The job assignments were directed by the firm; and it was the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. Reports were provided to the firm as to customers and payments, product log, rent paid by each booth renter on a monthly basis, and utilities. The worker's services were rendered at the firm's location Monday to Saturday as scheduled by the firm. The worker was required to perform the services personally.

The firm responded that the worker was given instructions as to where the shampoo station was and how to schedule the time frame for the hair service. The worker shampooed each client's hair and then rescheduled for the next appointment. The worker and firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the salon with the worker arriving shortly before it opened and leaving just before or after the last client. The worker was required to perform the services personally.

The worker indicated the firm provided apron, gloves, ledgers, office supplies, hair product supplies, cleaning supplies, and office phone. The worker furnished her cellphone. The firm acknowledged providing the shampoo and conditioner; the worker furnished nothing. The worker did not lease equipment, space, or a facility and she did not incur expenses. The firm and worker agree the firm paid the worker an hourly wage and the customers paid the firm. The firm added that tips in cash were paid to the worker. The worker was not covered under the firm's workers' compensation insurance policy. Both parties concur the worker was not at risk for a financial loss in this work relationship and that she did not establish the level of payment for services provided or products sold.

The worker stated the only benefit extended to her consisted of paid holidays. 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. The worker requested taxes be withheld and the firm let her go and asked for the key.

The firm's response indicated no benefits were made available to the worker and either party could terminate the work relationship without incurring a liability or penalty. There was no written agreement between the parties. It was unknown to the firm as to whether the worker was/was not performing same or similar services for others during the same time frame. The worker was a shampoo technician in the firm's salon; after washing the customer's hair she escorted them to stylist's chair for a hair cut. The worker quit.

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, 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 was only given once at the beginning of the work 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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 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 and that its contractual obligations were met. 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

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.

Please see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.