

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.16 OfficeWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the business of providing tanning services. The individual provided her services as a clerk for the years 2012 and 2013. The income she received for the services she provided for the year 2012 was reported on Form 1099-MISC.

The worker was referred for the position. She received instruction and her assignments from the firm. The firm stated that the worker did not receive training. The worker stated the firm trained the worker on operating the tanning machines, making appointments, opening and closing, and cleaning the salon. Her responsibilities included: answering the telephone, making appointments, operating the cash register, cleaning and operating the tanning beds, and folding towels. The firm stated the worker provided her services based on her availability. The worker's schedule varied and she provided these services approximately five to seven hours per day on a schedule which was mutually determined. The worker provided these services on the firm's premises for the firm's clients and it was understood that she would provide these services personally. If problems or complaints arose as a result of the worker's duties, the firm was ultimately responsible for problem resolution.

The firm provided all the supplies necessary for the worker to provide her services. The firm provided the cleaning supplies, tanning beds and office space. The worker did not need to purchase or lease any significant equipment used in providing her services. The firm determined the level of payment and the firm's clients paid the firm directly. The worker was compensated an hourly wage for the services she provided.

The worker provided her services under the firm's business name and she stated she 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 resigned and returned to school.

Analysis

The worker had the skills necessary to provide her 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 used by the worker to perform her assignments.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker.

The worker rendered her 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

She did not have any financial investment in the business and could not have incurred a business profit or business loss in the performance of her services for the firm. The worker provided her services under the firm's name, and her work was integrated into the firm's business for the firm's clients and were not part of an independent enterprise. 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.