

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

Occupation

04MAN.140 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicates the firm is a day spa and salon and has operated under [REDACTED], [REDACTED], and [REDACTED]. The worker has performed services for the firm from 2013 through 2016 and consisted reported the income earned on Form 1099-MISC. The firm indicated the worker performed services a temp front desk person, commission sales and freelancer. The worker indicated she was a manager, answering phones and scheduling clients for the company.

The firm indicated there was no contract between parties. The firm indicated she received no training, no work assignments. The firm was responsible for problem resolution. The worker determined the days/hours she worked. She took pictures and posted them on Facebook to network to bring clients in. The firm indicated she was required to perform her services personally. The firm indicated she was paid on commission/piece work. The customers paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she was represented as an independent contractor who promoted and brought clients for individuals in the industry/booth renters.

The worker indicated she was manager at the spa. The owner trained her in spa management and assigned the work duties. She reported to work Tuesday through Saturday nine am to seven pm. The worker stated she attended network meetings on behalf of the firm. The firm hired and paid all workers. The firm provided business cards (that represented her as the spa manager), office equipment and supplies, company e-mail promotional hair/facial products. The worker indicated she was paid by the hour. the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated she was sent home after requesting the classification correction to a W-2 employee.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

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.

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.

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 th

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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 firm stated the worker performed services as a front desk clerk, on a temporary basis. The worker indicated she was spa manager, and provided the business card that represented her as such. The work was performed on a continuing basis, whether full time or part time from 2013 through 2016. The other "jobs" the firm indicated she did during that time, such as babysitting, or working freelance for another person (it was not stated what services exactly were performed), does not mean the worker was not an employee for the work performed for this firm. The fact the worker applied for other positions while working at the firm, also not make her an independent contractor.