

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

Occupation 05ITE.94 Instructor/Teacher	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**

Information provided indicates the firm is a cosmetology school. The firm indicated the worker had been retained by the firm has a substitute cosmetology instructor. The firm reported income earned in 2014 on Form 1099-MISC. The firm states she is an independent contractor, due to being a licensed [REDACTED] Instructor and it is the school's policy and procedures to issue only 1099s. The firm provided a copy of the policy and procedures signed by both parties. The firm indicated no training was required as she is a licensed instructor with the State of [REDACTED]. Work assignments were given from the owner of the school. The worker reported to the owner if she had any issues or problems. Services were performed on the firm premises, utilizing all teaching materials belonging to the firm. Staff meetings were required. The firm indicated the worker was paid by the hour. The customer paid the firm. The school sets the rates for services prices. The firm indicated no additional benefits were provided. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated the worker walked out with no notice.

The worker indicated she was provided training on managing salons including classroom instruction, sales, ordering, and closing. She agreed she signed an operating agreement which specifically described the responsibility of the taxpayer and how to perform duties. The Owner of the salon made the schedule of what to teach and when classes were taught. She provided sales, inventory and cash-out reports. She indicated she opened the salon, attended staff meeting, held classes and gave practical instruction in working in a salon. All services were performed at the design school. The worker was required to attend mandatory daily staff meetings subject to termination for absence. She was required to perform her services personally. The firm hired and paid all workers. The worker agreed the firm provided all equipment, educational materials, supplies and uniforms. The worker was paid by the hour. The customer paid the firm. The firm did carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated there was a non-compete agreement. She was represented as an employee/teacher of the design school (copy of the firm's organizational chart which listed her as an instructor was provided.) She stated she quit. Highlights of the contract provided by the firm:

It starts with the Definition of an Employee. The term "employee" hereafter shall refer to any person who is employed on a full time, part-time, or temporary basis for which regular rates of compensation are paid. Only full time employees (40 hours per week, 2000 per year) will receive benefits. Part time employees do not receive benefits, their status is reviewed yearly. A temp employee is an employee brought on for a temporary position. A subcontractor/independent contractor – is not given benefits. Maintaining taxes is the their full responsibility. A 1099 will be given to all person receives 4^00.0 in any compensation capacity. [REDACTED] follows IRS guidelines on classification of employees and independent contractors. All contract 1099 must follow all procedures and guidelines of this manual as well as the College Catalog, [REDACTED] board of Cosmetology Statutes and Regulations, NACCAS standards and Dept of Education Regulations.

It continues to give a list that all employees must have on file in the Personnel Office. It is the responsibility of employee/1099 to make sure that the business Office has up to date information, emergency medical information, as well as current copies of license and CEU documents in their personnel file.

B. Lists the Policy on Employment/CEU Requirements:

Instructional employees are required to be licensed by the [REDACTED] State Board of Cosmetology to instruct in courses that are governed by the State Board of Cosmetology. The President will approve all instructional Staff. All Staff would be required to attend any in house CEU. [REDACTED] requires one week 0 40 hours of methodology and hands on each year, in house; as well as two instructors must attend the Academy in [REDACTED] for 40 hours of Advanced Teaching Methodology and Technical Practical Design Work. The President will choose the Attendees to the Academy in [REDACTED]. Those individuals will return and teach the entire professional instructional staff the advance teaching techniques. Those classes will or may be scheduled on Mondays from 3-6pm, until all the information/teaching is presented. A non-compete for this training and education is required by [REDACTED] as well AS [REDACTED] to maintain the integrity of the educational curriculum and techniques.

-Staff cannot work without a valid license from the State of [REDACTED]. Staff will not be compensated for any fees relating to renewal of license, unless the staff member...(no more information was provided. The last page contained the signatures of the worker signifying she had received the Employee Manual and College Catalog, she knows where the MSDS notebook is located and how to look for the information she may need during a salon emergency, she has reviewed and understand all policies and procedures in the manual and the NACCAS Self study report.

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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 was required to follow all rules and regulations of the firm. The worker was provided with the firm's operational manual. The fact the worker was a licensed cosmetologist, does not in itself make her an independent contractor. All work was performed on the firm premises under the direction and control of the owner. The firm provided all equipment and supplies and materials. The worker was paid by the hour, indicating no opportunity for profit or loss.