

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Personal Care Provider	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 firm is in business to provide esthetic consultations and non-invasive treatments for its clients. The worker was engaged to perform services as an Esthetician, to perform esthetic services and ultrasound therapy. The firm and worker entered into an agreement regarding these services, and to treat the worker status as independent contractor. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The firm provided the worker with online tutorial videos on specific models of equipment. Prospective clients were referred, or they called the firm for an appointment after seeing the firm's advertisements. Work methods were determined by the firm and worker. Work related problems and complaints were reported to the firm for resolution purposes. The firm required the worker to perform her services personally at its office. The worker was required to prepare daily report charts to track services provided, and to provide commission invoices, intake forms, and sales tracking forms.

The firm provided the worker with the office facilities, and equipment needed to perform the services. The worker did not incur work related expenses, economic loss, or financial risks related to the services she performed for the firm. The firm paid the worker on a salary plus commission, and piecework basis for her services. Clients paid the firm for services rendered.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and performed her services under a non-competes agreement with the firm. The worker did not personally advertise her services to others. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location, and in the name of the firm. The worker used the firm's facilities and equipment, and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov