

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

Occupation

05PCP Personal Care Providers

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**

Information provided by both parties indicates the firm is a salon & spa that provides beauty services (hair, skin, nails) for its clients. The worker was engaged to perform services as hair stylist. There were no written agreements provided by either party to evidence a valid booth renter's agreement between the parties. The firm treated the worker status as independent contractor, and 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 offered voluntary, advanced education and training (hair workshops, seminars, and product knowledge classes) for contractors who wanted to improve their skills. The firm used appointment making software to receive appointments and provide scheduled appointments to the worker. The firm and worker both determined the work methods by which to perform the services. Work related problems and complaints that the worker could not resolve were reported to the firm's owner for resolution purposes. The worker performed her services personally at the firm's business location.

The firm provided the worker with the facilities, all fixed equipment (chair, stations), shampoos, conditioners, chemicals, hair colors, and towels needed to perform the services. The worker provided her own personal styling tools, hair sprays, oils, combs, brushes, and drapes. The worker incurred expenses for tool replacement, and hair products. The firm paid the worker on a commission basis for her services. Clients paid the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

The worker was not covered under workers' compensation insurance. No information was provided to support that employment benefits were made available to the worker. The worker did not perform similar services for others. There was no information provided to evidence that the worker personally advertised her services to others. The work relationship could have been terminated by either party at any time without incurring liabilities, and ended when the worker terminated her services for the firm.

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## Analysis

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the 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. The worker used the firm's facilities, equipment, tools and supplies, 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](http://www.irs.gov)