

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Service 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 indicated the firm is a nail salon. The worker performed services for the firm as a nail technician in 2017. The firm reported the income on Form 1099-MISC, stating the worker agreed and she was licensed through the state. The firm stated work assignments were on a first come, first serve basis. The worker determined how she performed the services. All services were performed on firm premises. The firm provided the space, electricity and water. The worker provided the nails, tools and polish. The firm stated the worker did not lease, equipment, space or facility. The firm paid on a piece work basis. The customer paid the firm. The firm did carry workmen's compensation insurance. The firm indicated the worker set her own schedule. Either party could terminate the work relationship without incurring a penalty or liability. She did not perform similar services for others. The firm indicated she was represented as a partner under the firm's name. The firm stated she quit.

The worker indicated she was told when to work and what to do as far as clients coming in, restocking and cleaning. Whoever arrived at the salon first before opening was the first to do walk-in clients and then went in order from there. The worker performed services Tuesday through Friday ten to seven, and Saturdays ten to six, Sundays ten to five. She stayed from open to close, unless it was slow and instructed to go home. All work was performed on the firm premises. The worker indicated the firm provided files, buffers, polishes, pedicure necessities, acrylic necessities, nail frill and towels. She provided nail drill bits and acrylic nail brush. She agreed she did not lease equipment or space. She indicated she was paid on a commission basis. She agreed the customer paid the firm. The worker indicated she was given personal days. Either party could terminate the work relationship without incurring a penalty or liability. She indicated she was represented as an employee of the firm. The worker indicated she was fired.

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.

Analysis

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. Both parties indicated there was not a valid booth rental/lease agreement. All work was performed under the firm's business name. The fact the worker went to school and obtained a license as a State certified nail technician, does not make her an independent contractor. All work was performed on firm premises, for the firm's clients, at the rates charged by the firm. The customer paid the firm for the services received. An independent contractor, would have been free to charge what she wished (in competition with the firm) and would have collected payment directly from the customer.