

# SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Personal Care Providers	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 a corporation that operates a body piercing and jewelry studio. The firm engaged the worker as a body piercer. The worker was an apprentice. The worker performed services in two separate capacities. He performed services as a receptionist and as a body piercer. The worker's services as a body piercer are the services that are in question for this decision.

The worker stated he was an apprentice under the senior piercer for the firm. The firm stated the worker determined how the assignments should be performed. The worker stated he had a regular schedule Tuesday through Saturday. All of the worker's services were performed at the firm's location. The worker was required to perform his services personally. The firm would hire and pay any additional helpers or substitutes needed.

The firm provided the equipment and tools the worker needed to perform his services. According to the information provided the worker did have the privilege of ordering supplies for the firm according to the inventory that was needed for the piercing services. The worker did not lease any space. The worker received hourly rate of pay for the receptionist duties and commission for the piercing duties. The customers paid the firm directly for the services they received. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated he did not perform similar services for others and the firm stated he did perform similar services for others. The worker performed his services under the firm's business name. The worker terminated his services.

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## Analysis

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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.

The statement that the worker was an independent contractor pursuant to a verbal 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. In the instant case, the worker performed body piercing services for the firm's body piercing and jewelry studio which demonstrated the worker's services were integrated into the firm's daily operations.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the instant case, the worker was required to perform his services personally which demonstrated the firm was interested in the methods used as well as being interested in the end result as an employer. This was further demonstrated by the fact the worker was an apprentice and it is assumed he was required to take instructions from a senior regarding the services he performed.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. In the instant case, the worker did not set his own rates to charge the customer but received a percentage of the firm's rate that were charged to the customers. This demonstrated financial control by the firm.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. In the instant case, the worker could not suffer a significant loss as operating his own business as the firm provided the location, supplies and equipment the worker needed to perform his services.

The worker was an employee according to common law. The information provided by both parties showed the worker performed services in two separate capacities. The worker was treated as an employee for his receptionist duties and that service was not in question. The worker's services as a body piercer was dependent upon appointments set by the firm or walk-ins at the firm's place of business which showed control by the firm. The worker did have specific days he was required to perform his services which showed control over the worker. The fact the worker was an apprentice showed a dependency upon the firm as an employer. The firm required the worker to perform his services personally which demonstrated the firm was interested in the methods used as well as the end result. The firm had the financial investment as the firm provided the worker with the location, equipment and supplies the worker needed to perform his services. The firm had the potential for a significant loss since the firm was responsible to collect the amount that they charged the customers for the services provided. The worker was a body piercer for the firm body piercing business which demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989