

# SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Personal Service 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 hair salon and engaged the worker through a verbal agreement to provide the worker with training and instructions on various hair salon services in order to perform quality services on customers. The worker was assigned jobs through customers requests and by the firm or other team members who worked at the salon. The firm, other stylists, and worker determined the methods used to perform the services. The worker contacted the firm or other stylists regarding problems or complaints for resolution. The firm required the worker to provide the firm with time, services, and payment reports daily. The firm allowed the worker to work a flexible schedule at the firm's place of business around other commitments. The firm required the worker to attend one work ethic meeting. The firm required the worker to perform the services personally.

The firm provided the place of business, equipment, materials, and supplies. The worker provided personal tools of the trade. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses for services performed at the firm's salon. The firm did not reimburse the worker for any business expenses. The firm paid the worker on an hourly wage and commission basis and the customers paid the firm and the worker for the products and services. The worker turned over all payments to the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for services and products and allowed the worker to adjust them. The worker could not suffer any economic loss and had no financial risk other than her reputation with regard to the services performed for the firm's business operation.

There were no formal contracts between the firm and the worker, a verbal working relationship was discussed at the beginning. The firm did not provide the worker with any employee benefits. The worker performed other jobs while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker provided some customers with discounts on the services. The worker advertised her services on business cards and through social media resources. The firm represented the worker as a stylist under the firm's business name to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no significant financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment in the place of business, equipment, materials, and supplies. The firm had control over the starting point of costs of products sold and services performed and allowed the worker to adjust them. The worker could not suffer any economic loss and had no financial risk other than her reputation as a stylist. The worker did not have control over profits made or losses being incurred with regard to the costs of running the business operation. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by the firm over the services performed by the worker.

There were no formal written contacts between the firm and the worker. There was a verbal working relationship agreement entered into. The firm did not provide the worker with any paid employee benefits but the worker was allowed to work a flexible schedule around other obligations. The firm required the worker to perform the services personally at the firm's place of business. The firm referred to the worker by name as a stylist under the firm's business name to the customers.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.