

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

Information provided indicated the firm is a privately owned beauty salon. The worker performed services for the firm for tax years 2016 through 2018. The firm reported the income on Form 1099-MISC, stating the worker was performing services via an apprenticeship program. They indicated payment was discussed that she would be paid as an independent Contractor, (like all the other hairstylists at the salon), as she would be providing and using her own tools. The firm has indicated she did not receive any insurance benefits. The worker chose to do her apprenticeship hours full time, the same hours the owner was at the salon. The worker has since finished her apprenticeship hours and has quit working for the firm.

The worker indicated she answered phones, maintain the salon and made appointments. The work assignments were determined by the firm owner. She indicated she worked Tuesday through Saturday. She did not have the ability to set her own hours. All work was performed on the firm premises. The worker indicated she was required to attend mandatory staff meetings. The worker stated the firm provided most equipment, color and supplies. She provided job related expenses (to begin employment she was required to purchase her own tools. The worker indicated she did not lease equipment, space or the facility. She indicated she was paid by the hour and on a sixty/forty split commission basis. The clients paid the firm. The firm determined the price of the products/services sold. Either party could terminate the work relationship without incurring a penalty or liability. She indicated she was called an employee to others. It was by mutual agreement the work relationship ended.

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.

- Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.
- The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. Beauticians, usually provide their own scissors, combs, brushes, blow dryers, curling irons etc. These are deemed tools of the trade.

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. The worker was performing services under an apprenticeship program, which means she was in training, learning a trade or skill. It does not mean she is already a skilled individual who owns her own business to provide services. All work was performed on the firm premises, for the firm's clients. There is not a valid booth rental agreement utilized by the firm. All work is performed under the firm's business name, for the firm's clients, on a commission basis. The rates charged are determined by the firm, not the stylist. The clients pay the firm directly for the services performed, not the worker. An independent contractor, would be free to charge what they wished to their clients, and would collect directly for those services, they would pay the firm a set monthly fee for the space utilized. That is not what has transpired in this work relationship.