

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Cosmetologist

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

The firm is a a beauty salon and the firm engages the worker as a hair stylist. The firm interviewed the worker and engages the worker to perform services on a flexible as needed and available basis at the firm's place of business. The worker is experienced so no training was provided by the firm. The customers call the firm to set up appointments and the firm allows the worker to accept or decline jobs. The firm and worker determine the methods used to perform the services. The firm requires the worker to handle problems or complaints and resolve them. The firm requires the worker to provide the firm with service and payment reports. The worker performs the services on a flexible schedule based on customer requests and during firm business hours. The firm requires the worker to perform the services at the firm's place of business. The firm requires the worker to perform the services personally.

The firm provides the place of business, equipment, materials, and supplies. The worker provides personal tools of the trade. The worker does not lease anything or incur any business expenses. The worker is paid on a commission basis and the customers pay the firm. The firm does not carry workers' compensation insurance. The worker can not suffer any economic loss and has no financial risk with regard to the services being performed. The firm establishes the level of payment for products and worker determines the service charges.

There are no contracts between the firm and worker. The firm does not provide the worker with any benefits. The firm does not know if the worker performs similar services for others while performing services for the firm or advertises as a business to the public and the worker indicates no similar services are being performed for others or advertising as a business. The firm refers to the worker as an independent contractor per the firm and the worker indicates employee under the firm's business name. Both parties retain the right to terminate the working relationship at any time without incurring any liability.

Analysis

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 has control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services being performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risks an employer/employee relationship is evident. 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 this case, the worker has no significant on-going financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm has the business investment and control over profit and risk of loss with regard to the services the worker is performing for the firm's business. The firm establishes the level of payment for products. The firm and worker performed services on a commission paid basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered having control over business profit or loss. The worker does not lease space or equipment. These facts evidence financial control by the firm over the services being performed by the worker.

There are no formal contracts between the firm and the worker. The worker does not perform similar services for others while performing services for the firm. The worker does no advertising as a business to the public but rather performs services for the customers under the firm's business name at the firm's place of business.

Both parties retain 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.