

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Care 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

The firm is a full service salon. The worker was engaged to perform services as a hairstylist. The firm treated the worker status as non-employee compensation, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker was a licensed, trained professional. She received periodic product training from the firm. The firm required the worker to perform her services personally, at its salon location. The worker managed her own appointments, and managed her own schedule based on client appointments. Work methods were determined by the worker, the firm's manager, and the brand ambassador. Work related problems and complaints that the worker could not resolve were reported to the firm's manager, or the brand ambassador, for resolution purposes. The worker was required to attend sales meetings, staff meetings, and weekly motivational meetings.

The firm provided the styling stations, color, back bar, capes/aprons, foils, plastic wrap, shampoo, bowls, and specific brand of hair products. The worker provided her own professional tools, and other brands of hair products. The worker incurred expenses for tools maintenance, and some of the products. The firm paid the worker on an hourly wage basis, plus commissions as payment for her services. Clients made payment to the firm for services rendered. The worker's economic loss/financial risks related to loss of clients, and loss/damage to personal tools.

The firm covered the worker under its workers' compensation insurance policy. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed her services for others, or that she advertised her services personally to the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov