

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Service 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**

Information provided indicated the firm is a day spa. The worker provided facial services, skin treatments, makeup applications, waxing etc., in 2017. The firm reported the income on Form 1099-MISC. The firm indicated the worker was given on-the-job training for makeup lines. The worker tailored her own treatments with review from the owner. Work assignments were via appointments. The firm indicated the work schedule was flexible, (except closed hours) based on appointments and walk-ins. The worker was to perform services personally. The firm provided the space, materials and products. The worker provided business cards and personal items. The worker was paid on commission, cash advances given. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. the firm terminated the work relationship due to an inconsistent work schedule.

The firm provided a copy of the contract for commission workers. It outlines the responsibilities and rules that established her 'employment' with the firm as an independent contractor. It stated the worker was responsible for her own appointments. The firm has a receptionist, Tuesday through Saturday to make appointments and take messages for everyone. All appointments should be booked for normal business hours. (to mean the business hours of the Salon, example A was given). No taxes would be withheld from pay. Worker was to be paid on a commission basis. Do answer the phone if your available to do so. Be professional, protect your peers, and the image of the Salon. They were responsible for their own business cards. The Salon would provide the gift certificates, envelopes and gift bags for customers. Hours of operation are Tuesday through Saturday. Be to work on time, mark your book if you are planning on coming in later. We can't book appointments if we don't know your schedule. It goes on to list other rules of the Salon.

The worker indicated she was instructed how to set up the room, how to perform the services, and clean the work area. The Salon booked all appointments. She was required write notes on each client visit, as to the services provided. Services were performed on firm premises, for the scheduled times. The worker indicated the firm provided all equipment and supplies. She agreed she was paid on a commission basis, and the customer paid the firm. She was represented as an employee of the firm. She indicated she left.

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. All services were performed on firm premises, under the rules and regulations of the firm, during the firm's business hours. The contract states 'employment' with the firm. The worker was required to perform services only during the firm's business operating hours. The firm's receptionist (or whomever was available to answer the phone) booked appointments for everyone. The firm provided equipment, materials and supplies and the customer paid the firm directly for the services received. The firm also indicated the worker was provided on-the-job training by the firm.