

SS-8 Determination—Determination for Public Inspection

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| 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

The firm indicated as a massage therapist she determined her own treatment plans for her clients and provided them with recommendations for follow-up care. The firm indicated she was not expected to be on-site during her scheduled hours unless she had a client appointment. The firm indicated she was expected to monitor her own schedule and report to the studio when a client booked an appointment with her. She was required to maintain her own license and liability insurance. the firm indicated they provided the massage table, sheets and oil. The worker did not lease the space. She was paid fifty percent commission. She provided her own specialty products she preferred. The customer paid the firm. The firm indicated in April of 2018 they converted all massage therapists to employee status. At that time they were provided with an employee handbook, dress code, time off policy (not previously in place), sick time policy, Sexual Harassment Policy, Drug & Alcohol use etc. Pay went to thirty-five percent commission. this worker was asked not to continue to provide services.

The worker agreed no training was given, as she was a Licensed Massage Therapist. She indicated clients were assigned and schedule by the firm. She was required to arrive fifteen minutes before a scheduled client. She did laundry, answered phones, cleaned the studio, checked clients in and out. All work was performed on firm premises. Staff meetings were required. She was required to perform her services personally. She stated the firm provided all equipment and supplies. She indicated she was paid by the and agreed the client paid the firm. Days off had to be arranged with the firm. she was required to give up other part time work she had with other salons. All therapists were represented as employees of the firm. She was terminated for not being on time.

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. 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.

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 this is an erroneous misclassification of employment. The worker performed massage therapy services, for the firm, under the firm's business name, and reputation. The firm indicated the worker set her own schedule, yet the worker indicated she was required to be on site fifteen minutes prior to each appointment, and was in fact terminated for not following that policy. The clients paid the firm for the services received, not the worker. The worker did not lease the space utilized, nor was there a valid booth rental agreement. The firm provided the equipment and supplies. Specialty supplies would not be deemed a business financial investment. 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.