

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 hair salon. The worker is a licensed cosmetologist who was engaged to perform such hair services as color, cuts, and sets. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report monies received for her services as non-employee compensation.

The firm made quarterly product training available to the worker. Work assignments were based on the scheduled appointments and walk-ins. The firm's owner, and the worker determined work methods by which to perform the services based on client needs. The worker was required to perform her services personally at the firm's salon. The worker was required to report problems to the firm for resolution purposes. The worker was expected to work specific days, and to adhere to the firm's dress code.

The firm provided the worker with a workstation, backbar, color, bleach, and styling products. The worker provided her own tools of the trade, and her cell phone. The worker incurred expenses for maintenance of her own tools, and for continuing education. The worker did not rent/lease space at which to perform her services. The worker did not rent/lease equipment used to perform her services. The firm paid the worker on a commission basis for her services. Clients paid the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

The firm did not provide workers' compensation insurance coverage on the worker. Employment benefits were not made available to the worker. The worker advertised her services via social media, and use of business cards. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts of 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, using its facilities, equipment, tools, and supplies. The worker 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, and therefore retained behavioral control of the work relationship.

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 as a booth renter, 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