

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 operates as a day spa/salon. The worker was engaged to perform services as a cosmetologist. In this capacity, the worker provided hairstyling services for the firm's clients, and performed receptionist duties as requested by the firm. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non employee compensation.

The worker received guidelines regarding the firm's front desk operations, and appointment scheduling procedures. The worker was required to attend product training classes. Work assignments were received via walk-ins and client appointments. Work methods were determined by the firm and worker. The firm required the worker to perform his services personally at its location, and to report complaints to its manager and/or its owner for resolution purposes. The worker was required to attend the firm's mandatory meetings to discuss team work, code of conduct, etiquette, expectations, pricing, complaints, and issues regarding the firm's establishment.

The firm provided the worker with a workstation, shampoo bowl, shampoo, conditioner, and towels needed to perform his services. The worker provided his own styling tools, styling products, and hair color. The worker incurred expenses for hair color and solutions. The worker's economic loss/financial risks related to the loss or damage of equipment and material. The parties agree that the worker did not lease or rent the facilities or workspace at which to perform his services. The parties agree that the firm paid the worker on a commission basis for hairstyling services. The worker indicated that he received payment on an hourly wage basis for the receptionist services. The parties agree that clients paid the firm for services rendered.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others. The worker advertised his services via use of business cards showing the firm's logo. The work relationship was of a continuous nature, and both parties retained the right to terminate the work relationship at any time without incurring liabilities.

Analysis

The indication that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 his 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 his services. These facts show that the firm retained the right to direct and control the worker to the extent necessary to protect its investments, 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 his 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 his 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 he performed his 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