

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 worker initiated the request for a determination of her work status as an assistant to the firm's owner and as a hairstylist in tax years 2017 and 2018, for which she received Form 1099-MISC. In addition to services at the salon, the worker performed personal tasks such as retrieving packages for the firm, watering plants at her home, taking care of dogs, and running miscellaneous errands. The firm's business is described as a hair salon.

The firm's response was signed by the owner/member. The firm's business is a hair salon. The worker provided general hair styling services as a Jr. stylist.

The worker stated she watched the firm perform techniques which were explained to her and the worker then was allowed to perform the techniques. Job assignments varied; she was to complete any tasks given whether at the salon or in the firm's personal life which were given verbally, written lists, text messages, or phone calls. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the firm's home mini salon and at another studio, with arrival and dismissal times determined by the firm. The worker was required to perform the services personally.

The firm responded the worker was trained – she had just left beauty school. The job assignments were offered and the worker could accept or reject. The worker determined the methods by which she performed her services. Any problems or complaints encountered by the worker were handled by the worker. The services were rendered at the salon 35% of the time or home salon 65%, The worker was required to perform the services personally.

The firm and worker concur that the firm provided a chair, water, electric, towels, hair color, styling products, and cleaning supplies; and the worker furnished her tools which consisted of blow dryer, hair brushes, scissors, shears, combs, and clips. The worker did not lease equipment, space, or a facility. The worker said she was paid an hourly wage; but, stated the amount was not disclosed to her. The firm indicated the worker was paid piecework. An attempt to clarify the method of payment was not successful; the firm did not respond. The worker turned over the fee charged as well as any tips. Both agree the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker's financial risk was the loss/replacement of her tools of the trade. The worker did not establish level of payment for services provided or products sold.

Both parties acknowledge that no benefits were extended to the worker; although she could request unpaid time off if giving advanced notice. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker stated there was a verbal agreement that she would not perform services at any other salon. The firm and worker agree the worker resigned.

In addition to copies of the checks issued to her, the worker provided copies of text messages regarding picking up packages for the firm, checks being deposited, stopping at Walgreens to pick up items, the appointments booked by the firm and the fee to charge, folding towels, picking up mail, putting garbage out, watering plants in the firm's absence, moving the car from the garage to vacuum, clean, and mop and wash rugs, picking up decorations from the country club, prices to charge, the worker questioning what time she was starting her work day, and the worker questioning if she could leave to attend a sporting event with her family, among others.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.