

SS-8 Determination—Determination for Public InspectionOccupation
05PCP014405

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 an entity that engaged the worker as a hair stylist from 01/2019 to 07/2019. The firm is a salon and spa provider that provides services in [REDACTED]. This was pursuant to a written agreement between the parties. The worker submitted a Form SS-8 after received a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker completed an application for the job. Both parties agree the worker was given instructions regarding the completion of daily paperwork. The worker would receive her assignments when the firm's customers would call to make appointments for services provided by the firm. The methods by which the services were performed was determined by the worker. She was required to contact the firm's manager if any problems or complaints arose. According to both parties, a daily service sheet was required to be submitted by the worker. These sheets had to be signed by each customer at the end of the service that was performed. This signature was the payment authorization. The worker stated she was also required to mail these daily service sheets to the owner of the firm weekly. She worked 3 days a week and received regular weekly remuneration for her services. She performed the services on the firm's premises. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers.

The firm provided all the salon supplies. They stated because the salons were in [REDACTED] and [REDACTED], they were required by [REDACTED] regulations to always have [REDACTED] information present and available. The worker did not furnish any of the tools or equipment used in performing the services, except for her shears and blow dryer. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any business expenses. The worker received a commission. She would receive 50% of the work profits. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. According to the firm, it did carry worker's compensation insurance on the worker. The firm established the level of payments for the services provided. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the worker relationship at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform similar services for others. She did not advertise her services to the public or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the worker was injured while performing services for the firm.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customers. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their customers.

While the worker provided some of her own hand tools, this is not considered a significant investment. 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.

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, both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement or the filing of a Form W-9), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

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.

Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she filled out an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

Please see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.