

**SS-8 Determination—Determination for Public Inspection**

Occupation

05PCP Hairstylist

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 his work status as a hairstylist in 2018 to 2020, for which he received Form 1099-MISC. In this position, he opened the salon, answered calls and booked appointments for all stylists, performed stylist duties, and cleaned and maintained salon. The firm's business is described as a hair salon.

The firm's response, signed by the owner, describes the business as a hair salon. The worker provided services as hair stylist. The firm stated the worker had a key to premises, established his own hours, had his own clientele, and took walk-ins if he was there.

The worker indicated he was given instructions as to which clients to take, what hours to work, and how he was to be paid. The worker received job assignments through the firm. 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 9:30am to 3:30pm, six days a week at the firm's salon location. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that no specific training and instructions were given. The worker had his own clients and could accept or reject walk-in customers. The worker determined the methods by which performed the services. Any problems or complaints that needed to be resolved were directed to the firm. The worker's services were rendered on the firm's premises and he would set his own hours. The worker was required to perform the services personally. Any additional personnel being hired and paid was responded to as N/A.

According to the worker, the firm provided a space to work, shampoo bowls and dryers, colors, shampoo, and conditioner. The worker furnished shears, combs, and clippers. He could incur expenses for a deep conditioner or additional toner or color if not in stock. The worker did not lease equipment, space, or a facility. The worker was paid a 50% commission of the services performed. The worker was allowed a drawing account for advances, if the firm was willing to write a check. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker stated that if the salon was slow or no customers at all, no income was generated. The firm established the level of payment for services provided and/or products sold.

The firm indicated the firm provided utilities (water and electricity). The worker furnished and incurred all equipment and supplies used by stylist and was not reimbursed. The worker did not lease equipment, space, or a facility. The firm noted the worker made no investment in the salon infrastructure and could leave at any time. The worker was paid a commission/piecework. The firm did not require written or oral reports of sales, except to calculate commissions. The worker received payment of his commissions bi-monthly. There were no deductions for any costs from his portion. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The worker established the level of payment for services provided or products sold.

The firm and worker concur there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. There were no agreements that defined the work arrangement or prohibited competition. The firm indicated the worker was responsible for promoting his own customer leads. The firm responded that the worker was performing same or similar services for others during the same time frame; the worker disagreed. Both parties concur that the firm terminated the work relationship.

---

## 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.

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.

The firm's statement that the worker was an independent contractor 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.

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

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.

Please see [www.irs.gov](http://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.