

# SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.1 Personal Care Worker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

## Facts of Case

The firm is a hair salon. The worker provided her services to the firm in 2010 through 2012 as a hair stylist performing tasks such as; styling, cutting, coloring, and highlighting and received the Forms 1099-MISC for these services.

The worker stated that the firm instructed her to do all the tasks the job required including monthly mandatory events, and there was a dress code to follow. The firm contends that there was no training or instruction as the worker was trained in school. The worker received her assignments from work sheets that the firm scheduled and printed out and the firm determined the methods by which the assignments were performed. The firm stated that the worker received her assignments from the firm based on the firms' clients' requests, and the worker was determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm expressed that the firm's owner was notified of a problem or complaint only if the customer requests it and the worker was responsible for problem resolution. The worker maintains that she was required to submit a written formula including personal information for each of the firms' clients. The firm stated that there were no required reports. The worker's schedule varied, but she was required to arrive 10 minutes before her scheduled shift, clock in, read and examine the assignment sheets for the day, begin all opening duties, and clock out at the end of her day. The firm stated that the worker worked part time approximately 30 hours on a weekly basis, but her hours varied based on the work available and the worker's schedule of availability. The worker provided her services on the firm's premises. The firm reported that the worker provided her services on the firm's premises, home, customer location all based on the firm's client's needs. The worker stated that the firm required the worker to attend mandatory staff and Redken meetings. The firm maintains that there were no meetings. The worker indicated that if additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; style station, mirror, chair, color, products, sink for washing, towels, capes, and the appointment computer system. The worker provided the hairbrushes, combs, scissors, and clips. The firm added that the worker's supplies are purchased by the firm and deducted as a percentage from the worker's pay. The worker did not lease any equipment nor were any business expenses incurred beyond the hairbrushes, combs, scissors, and clips while providing her services. The firm added that the worker incurred business expenses such as; product, travel and education while providing her services. She received a commission for her services. The firms' customers' paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship.

The worker did not provide similar services to others during the same time period. The firm contends that the worker did provide similar services to others during the same time period. The worker stated that she was prohibited to obtain any client information from the firm. She provided her services under the firm's business name. The firm expressed that the worker provided her services under her stylist name. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the worker was fired.

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## Analysis

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The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm did not provide the worker with training, as she was hired due to her expertise in this field of work. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. 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. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The firm also stated the worker was hired on a part time basis. The fact that a worker performed her services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Additionally, the fact that the worker had an investment in supplies is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. Her pay was based on commission. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. Either the firm or the worker could terminate the agreement.

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.