

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.2 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

According to the information and documentation submitted, the firm's business is a spa and clinic providing chiropractic, acupuncture, sports therapy, message, and spa services. The worker was a licensed message therapist that provided message and spa services. The worker also performed other services such as ultra sounds, tens units on patients, and office help. The firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with her assignments by scheduling appointments with its clients. The worker personally performed her services at the firm's premises according to a work schedule provided by the firm. The worker contacted the firm's owners, or the desk staff, regarding any problems or complaints that arose for their resolution. The worker was required to submit a biweekly record of her services and soap notes on the clients.

The firm provided the venue and all necessary equipment and supplies, such as the message tables and linens, for the worker to perform her message services. The firm's customers paid the firm for the message services and the firm controlled the payment to the worker for her services. The worker had no investment in the facilities. The firm terminated the worker's services without incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the firm provided the worker with her job assignments. The worker personally performed her services at the firm's premises according to a work schedule provided by the firm. The worker was required to submit reports to the firm.

The firm provided the venue and all necessary equipment and supplies for the worker to perform her message services. The firm's customers paid the firm for the message services and the firm controlled the payment to the worker for her services. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities. The worker's message services were integral to the services provided by the firm.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, 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.

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. See Rev. Rul. 56-660, 1956-2 C.B. 693. 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. See Rev. Rul. 56-694, 1956-2 C.B. 694.

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 right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.