

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.3 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 provides beauty salon services on a nursing home facility. The individual provided her services for the firm for the years 2009 through 2013 as a hairdresser and the monies she received for the services she provided were reported on Forms 1099-MISC.

The worker stated she completed a job application and the firm contends the worker was hired by the previous owner. She received instruction regarding what paperwork completion was required for submission to the firm and write up procedures. She also received instruction on shop maintenance. The worker received her assignments verbally and on a weekly schedule. Her responsibilities included opening and closing the salon, cleaning the salon, counting the register, and providing hair styling services. The worker provided these services Wednesday through Friday from 9:00 AM to 5:00 PM based on client appointments. If problems or complaints arose as a result of the worker's duties, the firm was responsible and contacted for problem resolution. The worker provided these services on the firm's clients' premises and it was understood that she would provide these services personally. The firm stated that the worker agreed to provide services as an independent contractor. It is the nature of the work relationship that is the determining factor. The firm ultimately retained the right to determine or change the details or the means in which the worker provided these services in order to protect their business interest.

The worker stated the firm provided all the supplies used on the firm's clients. The worker supplied some of her own personal hand tools such as, clippers, rollers, and curling irons. She did not need to purchase or lease any significant equipment used in providing her services. The worker stated the firm determined the prices charged to their clients for the services provided. The firm determined the level of payment and the firm's clients paid the firm directly. The firm paid the worker on a commission basis.

The worker provided her services under the firm's business name and she stated she was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker was terminated.

Analysis

The worker had the skills necessary to provide her services. 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 or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. 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.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. 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 rendered her services personally. 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. 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. 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 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.

She did not have any financial investment in the business and could not have incurred a business profit or business loss in the performance of her services for the firm. The worker provided her services under the firm's name, and her work was integrated into the firm's business for the firm's clients and were not part of an independent enterprise. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

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