

## SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.6 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is limited liability company operating a hair and spa salon. The worker was engaged by the firm as a hair stylist. There was no written agreement between the two parties.

The firm paid for the worker's annual hair show in 2013. The firm made the appointments. The worker was responsible to resolve her own issues but could ultimately rely upon the firm to assist. The worker stated she had a set schedule and the firm stated the worker set her own schedule. The worker performed her services at the firm's salon. The worker was required to perform the services personally.

The worker provided copies of emails from the firm instructing the worker on what her schedule for the days and times she could perform her services.

The firm provided the salon, products, large equipment, materials and supplies the worker needed to perform her services. The worker provided her own personal hand tools. The worker did not lease any space to perform their services. The worker was paid a commission basis. The worker was paid on a commission basis. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of her duties. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm represented the worker as a stylist working in their salon and the worker stated she was represented as the firm's employee. The worker terminated her services.

The worker provided copies of the firm's Payroll Detail Report showing employment taxes withheld.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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 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. See Rev. Rul. 73-591, 1973-2 C.B. 337.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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**Analysis**

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The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government.

The worker was an employee according to common law. The information provided by both parties showed the worker was already a trained stylist and did not need any training. The firm did show control by setting the appointments for the worker. Control by the firm was also shown by the firm setting the worker's schedule. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as the end result as an employer. The firm had the financial investment since they provided the location, large equipment, supplies and materials for the worker to perform her services. The fact the worker provided her own personal hand tools is a common practice in this industry and does not lean toward the worker being an independent contractor. The firm set the rate of commission to the worker which demonstrated financial control over the worker. The fact the worker was a hair stylist in the firm's salon attending to clients that set appointments with the firm showed the worker's services were integrated into the firm's daily operations.

Based on the above analysis, 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 go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989