

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.14 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 nail salon in the business of providing nail services. The worker provided his services to the firm in 2013 as a nail technician with services including manicures, pedicures, gel, acrylics, and received the Form 1099-MISC for these services.

The worker stated that the firm instructed him to perform services on other employees to ensure that he was able to do all the tasks the job required. The firm contends there was no training or instruction. The worker received his assignments from the firm and the firm determined the methods by which the assignments were performed. The firm reported that the worker 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 explained that the worker was responsible for problem resolution and the firm only became involved if the worker could not resolve the issues. The worker's schedule varied, he worked when the salon opened until it closed according to the schedule the firm gave him. The firm maintains that the worker was able to make his own schedule during the salon hours of 10AM to 7:00PM. He provided his services personally on the firms' premises. The firm held a monthly staff meeting after work hours.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; polishes, gels, acrylics, light table and dryer. The worker provided his personal tools. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services for the firm. The worker received a commission for his 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 firm established the level of payment for the services the worker provided.

The firm did not make any benefits available to the worker. The worker did not perform similar services for others during the same time period. The worker performed his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

Analysis

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 his 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 instructed the worker regarding the performance of his services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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 worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered his 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. 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 worker had an investment in personal tools is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. His pay was based on commission. The worker could not have incurred a loss in the performance of his 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 his 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. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. 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.