

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.18 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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is in the business of facial hair removal using a technique with cotton thread. The worker was engaged as a threading stylist. The firm states the worker provided them with available days, hours and locations she could work and they filled in slots of their schedule accordingly. The worker was required to personally perform her services at the firm's premises. The clients paid the firm and the firm paid the worker on a commission basis. The worker was guaranteed a minimum daily amount. The firm determined the worker's rate of pay. The firm did not withhold employment taxes from the worker's earnings.

For approximately three weeks, the worker received specialized training for eyebrow threading. The worker also was given sanitation training. The firm states the worker determined how she performed services and the worker was required to notify them if any problems or complaints arose. Both the firm and the worker would discuss a solution to the problem or complaint. The worker was required to submit sales reports to the firm. The worker was not required to attend meetings.

The firm provided the cotton thread and cotton balls to the worker in order to perform her services. The worker did not incur expenses and she did not lease any equipment, space, or facility. The worker did not have an opportunity to incur a loss as a result of her services.

The worker did not perform similar services for others and the worker was prohibited from competing with the firm after her termination. The firm states the worker advertised her services on a third party's website. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship.

The firm provided a copy of a written agreement between themselves and the worker. This agreement states that the worker would be responsible for her taxes on the income she earned from the firm. The agreement also indicated the worker was to be at her work station at all times unless she was signed out or on break.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm trained the worker on the technique and sanitation process. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. The worker was required to sign in and out to take a break and for lunch and she was required to be present at her workstation at all times unless she was signed out. The worker risked being terminated if she did not follow these instructions. These factors indicate the firm retained the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm states the worker provided them the days, hours, and locations she wanted to work then they made their schedule, this factor in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.