

**SS-8 Determination—Determination for Public Inspection**

Occupation 05PCP.25 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 nail services, waxing, and facials. The worker provided her services to the firm as a nail technician with nail services that included manicures and pedicures in 2012 and received the Form 1099-MISC for these services.

The firm instructed the worker to do all the tasks the job required such as; following procedures on how to do the firms' customers manicures and pedicures within a specified time because fast service was not allowed. The worker received her assignments from customer appointments and she received customers in turn, and the firm's owner determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm's owner and the firm's owner was responsible for problem resolution. The worker had a set schedule worker Tuesday through Friday from 9:00AM to 7:00PM, Saturday from 9:00AM to 6:00PM, and Sunday from 10:00AM to 5:00PM. Additionally, any change in the schedule needed to be agreed upon by the owner. She provided her services personally on the firms' premises. The firm required the worker to attend meetings.

The worker stated that the firm provided all the necessary nail supplies, equipment, and facility the worker needed to provide her services. She provided the chisels, gloves and brushes. The firm expressed that the worker supplied the tools, implements, part of the supplies and the gloves. The worker did not lease any equipment nor were any business expenses incurred in the performance of her services. She was paid a weekly commission for her services. The worker maintains that the firms' customers paid the firm for the services the worker provided. The firm contends that the firms' customers paid the worker for her services. The worker did not assume any financial risk in the relationship. The worker indicated that the firm's owner established the level of payment for the services the worker provided. The firm said that the worker established the level of payment for the services she provided to the firm.

The worker did not perform similar services to other during the same time period. The firm stated that the worker did provide similar services to others during the same time period. The worker provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability.

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## Analysis

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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 her 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 her 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 her 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. 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. 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 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. 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. Furthermore, the fact that the worker had an investment in chisels, gloves and brushes is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. Her pay was based on commission. The worker could not have incurred a loss in the performance of her 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 her 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 firm expressed 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. 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.