

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.30 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The worker initiated the request for a determination of her work status as a hairdresser in tax years 2014 to 2015. The firm's business is described as a unisex beauty salon.

The firm's response was signed by the owner. The firm's business is described as hairdressing and barber services. The worker performed services as a hairdresser in tax years 2013 to 2015.

According to the firm, the worker was not provided any training or instructions. The worker had her own clients and walk-in customers were given to the available chair. The firm usually intervened if there was a dissatisfied customer. The worker was required to submit a sales ticket for each sale in order to calculate the weekly payment amounts. The services were rendered on firm's premises. The worker was to perform the services personally; there were no substitutes or helpers as the chair was reserved for the worker.

The worker responded that she was given specific training and instructions as to work schedule, appointments, daily tasks, and sale of retail products. The schedule and job assignments came from the firm owner. She agreed that any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the firm's business location. The worker stated she was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm and worker acknowledged that the firm provided chemicals, caps, towels and the worker furnished personal hand tools of the trade such as scissors, blow dryer, curling iron, clippers, combs, and trimmers. The firm indicates the worker leased chair - the 50/50 split included the use of the chair; it should be noted there was no written agreement. Both parties concurred the customers paid the firm. The firm established the level of pricing for services performed products sold.

Both parties agreed that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated she was not performing same or similar services for others during the same time frame; the firm stated she could have during her free time. The firm stated the worker was a contractor doing business under the firm's name, in the salon's premises.

The worker stated she was paid in cash until she received her TIN then was paid by check. The worker provided a copy of the verification of employment form signed by the firm affirming the worker was salaried and paid \$300 weekly, working 32 hours a week.

Analysis

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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.

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. See Rev. Rul. 56-660, 1956-2 C.B. 693.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. See Rev. Rul. 74-389, 1974-2 C.B. 330.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. 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.

CONCLUSION

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.