

## SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.31 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the business of operating a full service beauty salon. The worker was engaged as a hair dresser and nail technician. She received a Form 1099-MISC for her services in 2012, 2013 and 2014. There was no written agreement.

Both the firm and the worker agreed that no training or instructions were provided. Both parties also agreed that the worker received her work assignments from walk-ins at the firm's location. The worker also brought in new clients through referrals if possible and the firm's receptionist provided leads to the worker as well. Each party indicated that the other determined the methods by which the assignments were performed. The worker indicated that she would contact the firm if any problems or complaints arose; the firm noted that the worker would have to resolve any issues herself. Both parties agreed that the worker reported the total amount of the worker's services for the day. Only the worker provided her set scheduled hours that varied each day as well as according to the season. Both parties agreed that the worker's services were performed at the firm's premises. There were infrequent meetings. Both also agreed that the worker was to provide the services personally; but each indicated that the other party would be responsible for hiring and paying any substitute worker.

The worker indicated that the firm provided the hair and nail supplies, materials, and equipment as well as the facility. There was no lease involved. Both parties agreed that the worker received a commission and had no other economic risk. Both also agreed that the customer paid the firm but the firm added that some paid cash to the worker and that the worker did not pay that amount to the firm. Both agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The firm indicated that the worker answered the phone and scheduled her own appointments. The relationship ended when the worker quit.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

There were similarities between this case and Revenue Ruling 73-591, 1973-2, C. B. 337. In that ruled case, it was determined that a beautician who 'leased' space in a salon (no fixed amount), was required to work specific hours, furnished daily reports to the owner regarding her receipts for the day and paid for her own licensing was an employee. The salon furnished, repaired and maintained all the equipment materials and supplies. For her services the beautician received a set percentage of the money taken in by her. She was required to be at her chair at a specified time on those days that she came into work and to perform the services requested by the customers. The beautician furnished a daily report of her receipts on which her pay was calculated.

Compare these circumstances to Revenue Ruling 73-592 1973-2 C.B. 338. In that ruling, it was determined that a beautician who rented a booth in a beauty salon for a fixed monthly fee, sold and styled wigs she purchased herself, retained all the proceeds with no guaranteed minimum amount, selected her own customers, set her own schedule, adhered to shop rules, and maintained her own tools was engaged in a trade or business.

In this instant case, there are similarities with Rev. Ruling 73-591. The worker indicated that her hourly work schedule depended on the day of the week; her services were performed during the salon's open hours and fees charged were posted by the salon. The firm provided the salon itself as well as all the equipment and supplies needed by the worker. She did not pay a set rental amount and she received a percentage of her receipts, guaranteeing her a minimum of 50% of any receipt. The worker reported her receipts to the firm daily. Her customers paid the firm through the use of a 'common cash drawer.'

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. There were no benefits and there was no written agreement.

The worker was a cosmetologist at the firm's salon. She had no investment in the business. The opportunity for higher earnings or of gain or loss from a commission arrangement would not be considered profit or loss. She provided her services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Usually 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. This worker was not engaged in an independent enterprise, but her services were part of the necessary activities of the firm's salon operations. 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.

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.