

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.33 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 operating a beauty salon. The firm engages the worker to perform hair styling services and other duties as assigned for the firm's business operation. The worker is a licensed cosmetologist so the firm has not provided any formal training. The firm assigns the worker schedules to work and services to perform based on the firm's business needs. The firm and worker determine the methods used to perform the services. The worker contacts the firm regarding any problems or complaints the worker is not able to resolve. The worker provides the firm with job detailed reports. The worker performs the services at the firm's place of business. The firm requires the worker to perform the services personally.

The firm provides all the equipment, materials, and supplies except for scissors, clippers, and combs which the worker provides. The worker does not lease equipment or space. The worker does not incur any significant on-going business expenses. The firm pays the worker on a commission basis and the customers pay the firm and worker. If the customers pay the worker the entire amount is put into the firm's register. The firm does not carry workers' compensation insurance. The firm determines the level of payment for the products and services. The worker can not suffer any economic loss and has no financial risk.

There are no contracts between the firm and the worker. The worker does not perform similar services for others. The worker does not advertise as a business but does advertise her services under the firm's business name. Both parties retain the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case, the firm not the worker has control over the methods and means used in the performance of the services. The firm does not provide the worker with any formal training due to the worker's experience and qualifications. The firm assigns the worker schedules to work and services to perform based on the firm's business needs. The firm and worker determine the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The worker contacts the firm regarding any problems or complaints the worker can not resolve. The worker provides the firm with detailed work reports. The worker is required to perform the services personally at the firm's place of business. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provides everything the worker needs to perform the services except for scissors, clippers, and combs which the worker provides. The worker does not lease equipment or space. The worker does not incur any significant on-going business expenses. The firm pays the worker on a commission basis and the customers pay the firm directly or indirectly through the worker. If the customers pay the worker the entire amount is required to be put into the firm's business register. The firm determines the level of payment for the services and products. The worker can not suffer any economic loss due to on-going significant business capital outlays being made. The worker does not have control over profits made nor the risk of losses being incurred with regard to the services being performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss in a working relationship.

There are no contracts between the firm and the worker. The firm indicates the worker has always been issued a Form 1099-MISC and now is requesting a W-2. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker does not perform similar services for others while performing services for the firm's business. The worker does not advertise to the public as being engaged in a business operation but does advertise her services under the firm's business name. The worker performs the services personally at the firm's place of business under the firm's business name on a regular scheduled basis and has been for several years.

Both the firm and the worker retain the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.