

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

Occupation 05PCP.39 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 barber shop and the firm engaged the worker a licensed cosmetologist to cut hair for customers at the firm's place of business. The firm did not provide the worker with any formal training per the firm. the worker indicated other worker's provided training on the use of the firm's equipment and business practices and procedures used. The firm assigned the worker services to perform on a rotational basis and posted weekly work schedules. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's place of business.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items and mechanical equipment. The worker did not lease equipment or space. The worker did not incur any on-going business expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker's economic loss and financial risks were related to possible losses or damages to equipment.

There was a signed independent contractor agreement submitted between the firm and the worker. The agreement addressed job requirements, non-compete, compensation, and termination clauses. The firm required the worker to obtain the firm's prior approval to perform similar services within 1 mile and for 1 year after termination for others in any and all capacities. The worker stated that no similar services were preformed for others and the worker did no advertising as a business to the public. The firm referred to the worker as a contractor working at the firm's business operation per the firm, the worker indicated an employee under the firm's business name. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. In this case the firm engaged the worker who was qualified to perform services directly related and integral to the firm's business operation on firm customers. The firm assigned the worker services to perform on a rotational basis. The firm determined the worker's work schedule. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker 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.

When a worker does not have a significant financial investment in a business requiring on-going significant business capital outlays being made with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any on-going significant business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided the equipment, materials, and supplies needed in order for the worker to perform the services. The worker provided personal items and mechanical equipment. The worker did not lease equipment or space. The firm paid the worker on a commission basis. The firm's customers paid the firm directly and indirectly through the worker. If the worker was paid the entire amounts was required to be turned over to the firm. The firm determined the level of payment for the services. The worker did not have control over profits made nor the risk of loss. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The possibility of loss or damages to equipment is not considered having control over profit and loss. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor agreements provided indicating the scope of the working relationship and addressing various factors within the work relationship with regard to non-compete, expectations, compensation, and termination. 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 written or verbal between the parties. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business operation. The worker personally performed services for the firm's business customers at the firm's place of business on a regular scheduled basis over several months under the firm's business name.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.