

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.40 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is operating a hair salon. The firm engaged the worker through an application process to perform hair coloring and cutting services for the firm's business. The firm did not provide any formal training but the worker received instructions from the firm's designated manager. The firm determined the methods used by the worker to perform the services. The worker contacted the firm regarding problems or complaints for resolution. The firm required no reports from the worker on the services performed. The worker performed the services during a firm assigned work schedule. 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 did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a commission basis. The customers paid the worker per the firm and 50% was turned over to the firm. The worker indicated the customers paid the firm. The firm did not carry workers' compensation insurance. The firm and worker disagreed on who determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided no benefits. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker stated no similar services were performed for others while performing services for the firm. The firm and worker agreed the worker did no advertising as a business to the public. The worker stated the relationship could not be terminated at any time by either party without incurring a liability and the firm stated it could. The worker did not indicate the liability for termination of the working relationship.

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 engaged the worker to perform services that were directly related to the firm's business operations through an application process. 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 business. The firm's designated manager assigned the worker work schedules and services to perform. The firm determined the methods used by the worker 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 contacted the firm's manager regarding any problems or complaints for final resolution. The worker performed 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 capital outlays 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 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 by the worker to perform the services. The worker did not lease equipment or space. The firm paid the worker on a commission basis and the customers paid the firm or the worker. If the customers paid the worker the worker was required to turn over fifty percent of the payment for services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed in the operation of the business. 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 the operation of a business.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business operation. The worker personally performed services for the firm's business at the firm's place of business on a regular scheduled basis under the firm's business name over a period of several months.

Both the firm and the worker retained 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.