

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.59 Personal Care Worker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is an operating hair salon. The worker performed services as a stylist from tax year 2012 through 2016. The firm reported the income on Form W-2 for tax years 2012 through 2014. 2014 and 2015 the firm reported the income on Form 1099-MISC.

The firm provided a copy of the independent contract agreement he uses.. No signed agreement between the parties was provided. A copy of the W-9 signed in August of 2014 was provided. The firm stated the worker had his own clients. The worker would have resolved any issues himself. The worker set his own hours to work, (in accordance to the business hours and upon mutual agreement with the Salon) which usually were three days a week. Services were performed on firm premises only. He was required to perform the services personally. If he had wanted a sub, the firm indicated the worker would have hired one himself, but this never happened. The firm stated they provided the station, chair, electricity, water and color. The worker provided his own equipment i.e. scissors, hair dryers, irons, etc. The firm indicated the worker did not lease equipment. The worker was paid on a commission basis, plus tips. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker moved. The firm stated they did not represent the worker, he represented himself.

The worker stated he had performed services as an employee of the firm until August 2014, at which time the owner stated he was tired of paying payroll taxes and everyone was being switch to 1099-Misc. contract status. The worker indicated nothing changed The worker indicated no contracts were ever created. The worker indicated services were performed by appointment; new clients were assigned by the receptionist by availability. He indicated he performed services Tuesday, Wednesday and Thursday ten to six, which was coordinated with the firm. The firm provided all hair products and required them to use those products, and dictated the dress code. He provided his own combs, dryers, irons, scissors etc. He agreed he did not lease space. He agreed he was paid on a commission basis. He agreed the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability.

Analysis

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Conclusion

Based on the information provided we find this to have been an erroneous misclassification of employment. The worker performed services as a stylist for the firm, on firm premises, under the firm's business name. The firm provided a copy of a contract agreement it utilized, but no signed copy was provided. Both parties agreed there was nothing leased. Both parties agreed the customer paid the firm. The worker was paid on a commission basis of services performed.