

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

Occupation 05PCP.60 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 salon business. The firm engaged the worker to perform hairstylist services for the firm's business on a variable flexible scheduled basis during the firm's hours of operation. The worker had experience so no formal training was provided by the firm. The firm provided the worker with instructions on business policies and procedures. The worker received assignments through the firm's customers requests for services as well as through worker's personal prior experience with worker's customers at the customers requests. The firm's receptionist booked appointments for customers and requests were received through media resources. The firm, customers, and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding resolution to problems or complaints the worker was not able to resolve. The worker performed the services at the firm's salon location. The worker was required to perform the services personally once schedules were committed too.

The firm provided the business location, equipment, and supplies needed by the worker to perform the services. The worker provided personal tools of the trade. The worker did not lease equipment or space. The worker incurred expenses for personal tools, business cards, business fees, and other business items some of which were deducted by the firm from monthly settlements. The firm paid the worker on a commission basis for services and sales of retail items available for purchasing. The customers paid the firm. The firm established the minimum level of payment for the services and allowed the worker to charge anything above that amount. The worker's economic loss and financial risks were related to personal tools and re-do's for customer satisfaction issues.

The worker signed a Declaration of Independent Contractor Status Form with regard to the State Workers' Compensation Act in January 2016. There were no formal contracts signed by the firm and the worker. Per the firm the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker advertised her services through social media and business cards 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. In this case the firm engaged the worker through an application process to perform services for the firm's salon on a flexible variable scheduled basis during the firm's business hours. The firm scheduled appointments based on the customers requests and required the worker once committed to perform services as requested by the customers during firm provided schedules. The firm, customers, and worker 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 was required to notify the firm regarding any problems or complaints for resolution if the worker could not resolve them. The worker was required to perform the services at the firm's place of business once committed to scheduling. The worker personally performed the services. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the place of business, equipment, materials, and supplies. The worker provided personal tools of the trade. The worker did not lease equipment or space. The worker incurred expenses for personal tools and advertising her services. The worker also incurred business expenses for deductions for workers' compensation insurance and other fees as determined by the firm. The firm paid the worker on a commission basis for services and retail sales of products. The firm determined the minimum level of payment for the services and products and allowed the worker to sell above the firm's established minimum prices. The customers paid the firm. 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 costs associated for the services performed. 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 profit or loss.

There were no formal contracts signed between the firm and the worker. There was a statement indicating worker to be an independent contractor according to the State Workers' Compensation Act. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. 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 advertised her services to the general public through social media and business cards under the firm's business name. The worker personally performed services at the firm's place of business for the firm's business customers and worker's prior customers under the firm's business name on a regular continuous flexible variable scheduled basis over several years.

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.