

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.61 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

According to the information and documentation submitted, the firm is a full service beauty salon. The worker was engaged to perform cosmetology and hairstylist services. The worker provided her services between 2013 and April 2016. The firm reported the worker's earnings on Form 1099-MISC at year end during those years. Additionally, the worker was issued a Form W-2 in 2014. The firm also provided a "Declaration of Independent Contractor Status Form", with a date of January 8, 2016, indicating that the worker would be classified as an Independent Contractor if she was free of control in the performance of her services and if she is customarily engaged in an independent trade, occupation, profession, or business related to the services performed.

The firm provided the worker with the necessary salon equipment and supplies such as the booth. The worker also supplied her own hairstyling tools. The worker personally performed her services at the salon premises during the firm's established business hours. The firm established the level of payment for the services and received payment for the services from the customers. The firm paid the worker on a commission basis for her services. The worker was free to terminate her services without incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the worker personally performed her services at the firm's salon during its established business hours. The firm provided the worker with the necessary salon equipment and supplies. The firm established payment for the services provided to its customer and controlled payment to the worker, paying her on a commission basis. The worker had no investment in facilities providing similar services and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities. The worker's cosmetology services were integral to the services provided by the firm.

That the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 owner of the business.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.