

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.67 Personal Care Worker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicates the firm is a hair salon. The worker performed services as a beautician for tax years 2014 and 2015. The firm states she was an independent contractor because she would keep 50% of the amount she collected from her customers and remit the other 50% to the firm minus, 6% remitted to the State of [REDACTED] for chair rental. (That transaction is processed by the employer because of credit card). The firm indicated she had to have a valid [REDACTED] hairdressing license. The firm stated the customers walked in and waited for the next available hairdresser. Customer would also call in for an appointment with a specific hairdresser. The worker determined how she performed her services. If a problem arose the firm indicated she was required to contact the manager/owner of the salon. The worker performed services on Tuesday to Friday ten am to six pm., and Saturdays ten am to five pm. All services were performed on the firm premises. The worker was required to perform the services personally. The firm provided the shampoos and hair dyes. The worker provided her own tools. The firm indicated the customer paid the firm. The firm indicated the prices charged for services were posted on the wall. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker performed similar services for others. The firm indicated the worker advertised via business cards. The firm indicated she was fired.

The worker stated the firm had full control of her time. She was instructed which colors to use, how they wanted hair to look, when to go to lunch, when to leave to go home. She was required to be at work by ten am and work until seven pm. Tuesday through Saturday. Sometimes she worked until 10. All services were performed on the firm premises, utilizing their products, supplies, towels etc. She agreed she provided her own scissors, combs brushes. She was paid on a 50/50 commission plus tips. The worker stated she did not lease equipment or space. All work was through appointments from clients, or walk-ins. The worker had company business cards with the firm's name, phone numbers and e-mail addresses. The clients pay the front desk. The firm handled all payments, no one was allowed near the register.

It is our usual practice in cases of this type to solicit information from both parties involved. We requested information from the ****firm/worker**** concerning this work relationship. Because we received no reply, we are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement 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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. Information provided by the firm indicated assignments were via appointments and walk-ins at the firm's facility. The worker performed services on a set schedule Tuesday through Saturday.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. In the instant case, the firm determined the prices charged for services to their clients. The firm has indicated the client paid the firm directly for the services performed. The firm has indicated chair rental was based on fifty percent of what the worker collected. The firm handled those transactions also, not the worker.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business. The firm is not operating nor do they have a valid lease agreement (per IRS regulations) with their hair dressers. All work conducted would be done so separate and apart from the firms' business. The worker would be paying a set monthly rental fee for the space, she would be able to charge more or less for the services provided. The clients would be scheduling directly with her, and pay her directly if this were a true booth rental business. This is not happening, in the instant case.