

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Hairstylist

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"☐ Delay based on an on-going transaction☐ 90 day delay**For IRS Use Only:****Facts of Case**

The worker initiated the request for a determination of her work status as a hairstylist in tax years 2014 to 2016, for which she received Form 1099-MISC. The firm's business is described as a full-service beauty salon. She stated the following: she was told what to charge; the owner provided hair color and other supplies; a central cash register was used (the receptionist also collected for services); she was asked to sign for receipt of an employee handbook; there was a chore board; dress code and hours of operation were dictated; and, there was central scheduling at the reception desk.

The firm's response was signed by the owner. The firm's business is a hair salon and spa. The worker provided services as a cosmetologist; and, the worker was an independent contractor, responsible for soliciting her own customers, and arranging her own schedule and time off without the need to inform the firm.

The worker indicated she was given training and instructions on how to blow dry hair properly and a seminar on hair coloring. The appointments were scheduled on the computer for call-ins or walk-ins primarily by the receptionist. The firm determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were directed to the firm or the salon manager for resolution. The worker's services were rendered at the firm's business location from 9 to 5; hours could be changed to accommodate a client, with the firm's approval. Mandatory staff meetings were held. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that there was no specific training and instructions given to the worker. The job assignments were scheduled by the worker based on her schedule, whether remotely or in the salon using the scheduling software. The worker determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were resolved by the worker. The worker's services were rendered at the firm's location. The firm indicated there were occasional non-mandatory meetings to resolve issues. The worker was required to perform the services personally; any additional substitute or helper was hired and paid by the worker.

The firm and worker acknowledged that the firm provided the location, chair station and wash sink, all chemical products and supplies, and towels. The worker furnished shears and clippers, blow dryer, combs and brushes, and her cosmetology license. The worker did not lease equipment, space, or a facility. The customers paid the firm; and the firm paid the worker a commission. The worker was not covered under the firm's workers' compensation insurance policy. The worker stated she was not at risk for a financial loss in this work relationship; however, the firm noted she would have to replace worn or damaged scissors, blow dryers, and combs and brushes. The worker indicated she did not establish the level of payment for services provided or products sold. The firm responded that the worker did establish the level of payment for services provided and the firm set prices for the retail products sold.

Both parties concur there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. They also agree the worker was not performing same or similar services for others during the same time frame and that the firm terminated the work relationship.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.