

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.4 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 a sole proprietor operating a hair salon. The firm engaged the worker a hair stylist. There was no written agreement between the two parties.

The worker was instructed on what tools she would need to purchase to perform her services at the firm’s place of business. The worker stated she got her assignments from the firm. The worker relied upon the firm to resolve problems and complaints. The firm set a schedule for the worker to perform her services. The worker was required to report to the firm on the clients she had for the day and the totals that were charged to the clients. The worker performed her services at the firm’s location. The worker stated the firm had random meetings she was required to attend. The worker was required to perform the services personally.

The firm provided the location, large equipment and supplies the worker needed to perform her services. The worker provided her own hand tools. The worker was paid both on commission and by the hour. The customers paid the firm directly. The firm stated the worker leased space at the firm’s location. The worker could not suffer an economic loss in the performance of her duties. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated she was represented as an employee. The firm terminated the worker’s services.

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.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the worker was instructed how to treat the firm's customers. There also was control by the firm in the fact the worker was instructed on cleaning procedures for the salon that she was expected to perform. The worker relied upon the firm as an employer to resolve her problems and complaints. The firm set the worker's schedule which showed control over the worker's services. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. The firm had the financial investment since the firm provided the location and the large equipment and the supplies the worker needed to perform her services. The fact the worker provided her own hand tools is a common practice in this industry and does not lean toward an independent contractor. The customers paid the firm directly at rates set by the firm which demonstrated the firm was the party that had the potential to suffer a loss as the worker was either paid by the hour or on a commission basis that was set by the firm. The firm retained the right to discharge the worker which showed control over the worker through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989