

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

Occupation 05PCP.62 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 in business to provide alternative therapy services, including massage, acupuncture, eshetics, reflexology, wellness coaches, and emotional freedom. The worker was engaged to perform services as a licensed massage therapist. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker signed receipt of the firm's Standards of Practice Manual. The firm provided training and instructions to the worker with regard to the use of the firm's computer software, and the firm's opening and closing procedures. Client appointments were made with the firm through its receptionist and given to the worker through the firm's office manager. The worker could accept or decline appointments. Problems and complaints were reported to the firm's office manager, and resolved by the manager or the firm's owner. The worker was required to provide the firm with completed client charts. Services were required to be performed personally, at the firm's location, or at massage events held off the premises with the firm's approval.

The firm provided the private room space, massage tables, computer, software, intake forms, massage brochures, service menus, towels, linens, oils, hot stones, and heat packs needed to perform the services. The worker provided uniforms, educational material, lotions, and could have chosen to provide her own table, linens, and towels. The parties disagree as to whether or not the worker rented/leased space at the firm's facilities, in which to perform her services; neither party provided information to support a valid renter's/lessee agreement. The worker was paid on a commission basis for her services. The firm established the pricing for most of the services offered. The worker incurred expenses for business cards, and continuing education. Clients made payment to the firm for services rendered. If the worker received payment from clients, the total was remitted to the firm. No information was provided to support that the worker incurred economic loss or financial risk related to the services she performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker performed similar services for others, with the firm's approval. Advertising was done via use of the firm's business cards, radio ads, and website. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location, and at locations approved by the firm. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)