

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

ALLYSON SENTER)
d/b/a I DO PRETTY)
207 NE DELAWARE AVE., STE 22)
ANKENY, IA 50021,)
)
Appellant,)
)
v.)
)
IOWA WORKFORCE DEVELOPMENT,)
)
Respondent.)

DIA Case No. 24IWDMo005

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATEMENT OF THE CASE

Iowa Workforce Development (“IWD”) completed an investigation and determined that an employer-employee relationship existed between Allyson Senter d/b/a I Do Pretty (Senter or IDP) and eight workers. Senter appealed IWD’s determination. IWD transferred the case to the Department of Inspections, Appeals and Licensing (DIAL) to schedule a contested case hearing. A telephone hearing was held on October 11, 2023. Senter appeared and testified. She was represented by William Strong. Jeffrey Koncsol represented IWD. IWD field auditor Deborah Pendleton appeared and testified. IWD exhibits 1-18 and Appellant exhibits 1-15 were admitted as evidence.

ISSUE

Whether an employer-employee relationship existed between Allyson Senter d/b/a I Do Pretty, and eight workers performing services for Allyson Senter d/b/a I Do Pretty.

FINDINGS OF FACT

In April 2023, IWD received a public tip from a worker performing services for IDP that possible misclassification of employees was occurring at IDP, a salon that provides hair, make-up and skin services. Allyson Senter is the sole owner of IDP. Field auditor Deborah Pendleton was assigned to conduct an audit.

The audit period was years 2020 through 2022. Senter completed a questionnaire and provided requested audit documents, including business tax returns and 1099 tax forms issued. She explained the workers provided hair, makeup and skin services at the salon and on-site. Eight salon workers were identified during the audit: Ashley Dixon, Jenna Schleuter, Meghan Campbell, Chelsey Dougherty, Jessica Thomas-Reynolds, Sara Triplett, Danielle Moore, and Liz Hinds. Senter stated she met the workers through

weddings they were separately hired to work, or they directly reached out to her to inquire about helping with wedding parties.

Senter asserted the workers are all independent contractors. All were issued 1099 tax forms. Senter provided copies of signed “Independent Contractor and Non-Compete Agreements” (“IC agreements”), for four of the eight employees (Dixson, Schleuter, Dougherty, Triplett). Senter described the workers worked as much or as little as they wanted. For three of the workers (Dixson, Dougherty, Schleuter), Senter stated the workers are paid a portion of the appointment, minus rent and supplies. For one employee (Thomas-Reynolds), Senter stated she was paid a set amount per service. One employee, Liz Hinds, Senter stated she only did one person’s lashes and it did not work, so Hinds was not asked to do any more services.

For Sara Triplett, Senter explained she “helped manage contracts from home.” She “paid her hourly for different tasks.” For on-location wedding makeup, Senter stated she paid Triplett specified amount per person. Triplett’s IC agreement indicates Triplett was paid different compensation per service.

The IC agreement is a two-page document identical to each worker. The agreement contains, in relevant part:

- 1) **Performance of Services as Independent Contractor**
 - 1.1 Said Independent Contractor agrees to perform the services as stipulated by IDP
 - 1.2 Make-up application, if agreed upon
 - 1.3 Hair styling, if agreed upon
 - 1.4 Meet clients with warmth, friendliness and professionalism
 - 1.5 Perform the bookkeeping tasks, as necessary, such as identifying clients and services being provided, collection of monies, receipts provided to client
 - 1.6 Communicate with IDP regarding monies received, expenses, client relationships, venue issues (if any), other pertinent and related issues regarding booking
 - 1.7 Independent Contractor shall receive instruction from IDP as to desired performance and results
 - 1.8 Independent Contractor shall maintain, at its own expense, a professional kit, approved by IDP
 - 1.9 This Agreement shall not be construed as a co-owner or partnership
- 2) **Terms and Conditions of the Performance of Services**
 - 2.1 Independent Contractor shall not be required to keep any fixed hour
 - 2.2 Independent Contractor will be responsible to be prompt to the hours agreed
 - 2.3 There shall be no minimum annual or monthly guarantee paid to Independent Contractor
 - 2.4 Independent Contractor shall not be entitled to any sick leave, sick pay, holiday pay, vacation pay or any other benefits

- 3) **Compensation**
 - 3.1 Independent Contractor agrees to receive compensation from IDP based on pre-established fees, as outlined in this Agreement
 - 3.2 Compensation per service provided shall be \$

These fees may be modified, based on the approval in writing by both IDP and the Independent Contractor
 - 3.3 IDP agrees to reimburse Independent Contractor for any previously discussed out-of-pocket expenses
 - 3.4 IDP agrees to pay Independent Contractor for its services within two weeks after services were rendered

- 4) **Authority to Contract**
 - 4.1 Independent Contractor shall have no authority to bind, commit or obligate IDP into any future obligations by any promise or representation

- 5) **NON-COMPETE**
 - 5.1 For a period of three (3) years after the execution of this Independent Contractor Agreement, Independent Contractor will not directly or indirectly engage in competition in any way nor associated with any like business of IDP within the greater Des Moines, Iowa area
 - 5.2 The term “competition” as used in the foregoing shall include, but not limited to, attempts to divert clients, customers, or accounts from IDP
 - 5.3 Independent Contractor understands and agrees that he or she may not take or copy any customer/client information and shall not solicit, take away, or attempt to call on or attempt to redirect IDP clients to those of Independent Contractors
 - 5.4 Independent Contractor understands that the non-compete provision of this Agreement is enforceable if violated by a court of competent jurisdiction

Pendleton mailed questionnaires to determine status of worker (QDSW) to seven workers. She received responses from five workers: Jenna Schleuter, Meghan Campbell, Chelsey Dougherty, Danielle Moore, and Sara Triplett.

Those who responded describe their work as providing hair, make-up and skin services at the salon and on-site at wedding venues. They stated the work is performed under IDP's name. Two employees believed that IDP represents workers as employees to the public, citing the IDP sign at the salon, advertising them on IDP's website, and requiring the workers to tag IDP on social media accounts. The workers acknowledged the existence of a written IC agreement between them and IDP, but at least three believed they are employees of IDP because IDP sets hours, expectations, and pays employees commission for services. Some workers indicated the scope of their work with IDP has changed but the written agreement had not been updated to reflect the changes.

At least four workers reported that IDP has the right to require fixed hours of work. When asked to provide their daily routine, the workers indicated that IDP schedules services based off the availability they have provided. One employee reported that “sometimes” Senter scheduled her outside of her set hours and that “it is out of [worker’s] control.” The workers reported their work assignments come through IDP’s online booking website. They reported being required to report to the salon for scheduled salon appointments, or to report to the salon after off-site appointments, to report financial transactions. Workers are not required to report to the salon if they do not have appointments. All workers stated they were required to attend meetings, but only one claimed there was any penalty for not attending the meetings. Most employees indicated they were required to provides services personally. If they were unable to perform work for an extended period of time, one worked indicated IDP would find a replacement while a different worker indicated she was required to find a replacement or reschedule clients. The rest of the workers stated no arrangements were made in such situation, or stated “not applicable.”

All workers except one claimed that IDP supervised or reviewed their work. In explaining the supervision, one worker stated that Senter reviewed her portfolio and “recommended training” with her. Two workers explained that they were required to submit photos of their work and tag IDP on social media accounts. One worker stated that Senter provided feedback in-person at the salon, or provided feedback on pictures if services were provided on-site. Only one employee stated IDP had a probation period for new staff. All workers asserted that IDP has the right to direct and control the manner in which the workers perform the services. Specifically, the workers stated that IDP books appointments, sets the service prices and expectations.

The workers indicated they are paid by piecework or commission of services provided. IDP collects payments from customers through its online payment system. The workers report to IDP the services they provided and then IDP pays the workers based on previously agreed-upon compensation structure. IDP does not provide any employee benefits. The workers reported that IDP provides office facilities, business cards, order blanks, and price lists. The workers reported that they have expenses, and that both they and IDP provide equipment, supplies, materials, and tools necessary to perform their work. The workers do not pay rent for a booth or chair at the salon.

Two of the five workers who responded to the QDSW indicated they performed services for others while they worked for IDP, and that they were required to obtain IDP’s approval for it. They all indicated the existence of a non-compete clause in the IC agreement. All workers reported that IDP can discharge them at any time. Four of the five workers stated they are unable to end the relationship without incurring liability or penalty, specifically citing to the non-compete clause in the IC agreement. All workers indicated they solicit new customers, with three stating that IDP provides them with customer leads. Two workers reported they are required to follow up on customer leads, while one stated she was not required to do so.

If problems or complaints arise, the workers reported that they contact Senter with those issues. Three workers indicated IDP was responsible for resolving problems or complaints, while two workers indicated both they and IDP were responsible for finding

resolution. If the worker's services are not satisfactory, two employees stated they can be removed or reassigned from a booking, or not be paid for services. It is unclear from the responses if IDP or the client would withhold payment, or if the worker would agree to the booking removal or reassignment.

Sara Triplett performed work as a make-up artist and as salon manager. Specifically, on her role as the salon manager, Triplett stated on the questionnaire that she believed herself to be an employee because IDP dictated all the work. She stated her managerial duties are not formalized in a contract, but are verbally agreed upon. Triplett stated she is always on-call, has no set schedule and is paid for 10 hours a week. She reported being paid an hourly wage for her work. Triplett stated working on some tasks at the salon (meetings, payroll), and remotely for others. Triplett indicated she was required to report to the salon for meetings, events, payroll, and supervision of other employees. She indicated IDP has the right to direct and control her work, specifying that IDP tells her what posts to publish, how to respond to individuals, to write a handbook, etc. She gets her assignments from Senter, or they are initiated by staff. Triplett provided a log of services she provided from June 2021 to March 2023. She logged hours as "salon manager" on 6/23/21, 7/1/21, 7/7/21, 7/13/21 and 7/21/21, a total of 11 hours during that time period. There are no time entries for her work as salon manager until March 3, 2022, at which time Triplett entered 25 hours for "salon work" for December 2021 to February 2022. She then logged 12 hours on March 31, 12 hours on April 30, 15 hours on June 30, 17 hours on July 31, 30 hours on October 2, and 20 hours on October 31, 2022.

As part of the audit, Pendleton reviewed information from IDP's website and social media accounts. IDP's website had a "meet the team" section. It presented Senter as the salon owner. The team included six of the workers under audit (Dixson, Schleuter, Campbell, Dougherty, Thomas-Reynolds and Triplett), and three individuals who were not part of this audit. Triplett was represented as the salon manager. The information on the website included a photo and name of the workers, the type of services they provided, and short biographical information written by the workers. The information included directing customers how to view their work, which included both IDP social media hashtags and the worker's separate social media business accounts.

Other IDP social media posts were also reviewed as part of the audit. In May 2022, a post on IDP's Facebook page welcomed Jenna Schleuter, referring to her as "our newest team member." A post from March 2022, stated, "We are hiring!!! Looking for a cosmetologist, lash artist and makeup artist to join our team!" The post included a group photo of Senter with the workers, all of whom are wearing the same shirts with the IDP name on the front. Additionally, in July 2021, Senter responded to an online customer review who expressed dissatisfaction with her interactions with Senter specifically. In her reply, Senter stated that she "was able to hire a salon manager" to ensure that she does not fall behind on emails. She further stated that she tries not to hover or interfere when "team members are working with their guests" as she is usually with her own clients.

On May 8, 2023, Pendleton emailed Senter her initial findings with a determination that the eight workers subject to the audit should be classified as employees. Senter was given opportunity to provide any additional evidence to support IDP's position. She provided a

seven-page letter detailing how IDP operates, and why the salon workers are rightfully considered independent contractors. Senter explained that IDP is solely her business and she files tax returns as a sole proprietor. She started IDP in California, prior to moving and registering the business in Iowa. IDP has been primarily an “on-site location” for weddings to provide make-up and hair services for bridal parties. The independent contractors that offer services to the brides (clients) are licensed and experienced to perform the work, bring their own tools and equipment for the services. The independent contractors directly communicate with the clients regarding scheduling, services, and payment. In short, Senter asserted the workers control and perform services for the client, and IDP has no control over that work.

Senter further explained that due to a need to expand services, she signed a lease for a salon location. This space is available to the independent contractors to provide hair styling and make-up services. The independent contractors are licensed in their respective fields. They determine what hours to work, how often, what to wear, and how to interact with clients to provide beauty services. The contractors determine their rate for services rendered. Senter stated the independent contractors maintain their own separate businesses, client lists and work where they want. IDP has a scheduling system for requesting appointments, but the independent contractor has the option to accept or decline an appointment. The workers are paid based on the services completed. Senter stated that an option was provided for contractors to pay rent for a booth, but they elected to receive payments based on booked clients and services at the salon, instead of having a monthly rent expense. They are referred to as being part of a “team,” but IDP does not refer to them as employees and does not provide any employee benefits.

Senter’s response also provided specific information on workers listed in the audit letter:

- Chelsey Dougherty – a stylist who has worked for herself for 11 years. She manages and books her own clients, set her own pricing, and has her own supplies. By choice, she elects to receive payment for each job through IDP rather than paying a rental booth fee, which affords her greater flexibility. She also works at another salon.
- Danielle Moore – she was a freelance makeup and lash artist. She sets her own pricing. Moore was an independent contractor with IDP for about a year, but is no longer associated with the business.
- Jenna Schleuter – she is a licensed hair stylist who maintains her own DBA. She worked at another salon but preferred to be an independent contractor with IDP because she sets her own schedule and has greater flexibility. She sets her own pricing, has and manages her own clients, and books her own appointments.
- Jessica Thomas – She is not with IDP, and has her own salon. All of her work is tagged under her name. She works occasionally on location for weddings, but subcontracts under her salon.
- Liz Hinds – She worked once with a lash client and never returned and have not heard from her again.
- Meghan Campbell – She has been an independent make-up artist for 10 years. She also does microblading, which is required to be done at a

designated location by the licensing board. She is able to provide microblading services at IDP. She has her own clients, make-up, tools, lighting and her own social media accounts.

- Sara Triplett – she was contracted to help with office-related duties. She worked remotely, with no designated hours. Her job was task-oriented and paid by the completion of the designated task. She is no longer affiliated with IDP.

Pendleton reviewed Senter's response to the initial findings. She ultimately determined the response listed reasons why the workers should be considered independent contractors, but provided no additional audit documents or evidence to prove the employment type. Further, Pendleton concluded many statements in Senter's response are inconsistent with the audit evidence previously obtained and reviewed. No follow-up was conducted with Senter or the workers to further investigate the inconsistencies.

On June 21, 2023, Pendleton completed the audit of IDP, finding eight workers were misclassified by IDP as independent contractors when they should be considered employees. The workers determined to have been misclassified by IDP were: Ashley Dixon, Chelsey Dougherty, Danielle Moore, Jenna Schleuter, Jessica Thomas-Reynolds, Liz Hinds, Meghan Campbell, and Sara Triplett. The notice of decision cited the following factors for the determination:

- The worker(s) performed duties in the regular service of the employer.
- The work was performed under the name of the employer.
- The service provided by the worker(s) was an integral part of the business.
- The worker(s) did not have a financial investment in the business.
- The worker(s) could end the relationship without incurring liability.
- The employer could fire the worker(s) without incurring liability.
- The worker(s) had a continuing relationship with the employer.
- The employer set the prices, accepted payments from clients, and collected sales tax.
- The worker(s) did not have a sales tax permit or operate their own separate business.
- The worker(s) did not pay rent for a booth or chair.
- The worker(s) worked schedules set and provided by the employer.
- The worker(s) were required to provide the services personally.
- The employer would require workers to report services completed each day.
- The employer required a non-compete agreement in the contracts with the worker(s).
- The employer had the right to direction and control over the worker(s).

IDP appealed the decision. IDP submitted licensure information for five of the workers included in the audit: Dixon, Dougherty, Thomas-Reynolds, Triplett, and Moore. The workers do not list any establishments on their licenses. The addresses provided on the

licenses are not associated with IDP. IDP also submitted Facebook information showing Jenna Schleuter and Danielle Moore have their own business pages under which they advertise their services. The listed contact information on the Facebook pages make no reference to IDP or include contact information for IDP, but only to the individual stylist. IDP also submitted work logs for Dougherty, Campbell, and Triplett. All workers used the same template form to track services provided. The form contains five columns with the following headings: date of service, services (s), tip, total collected, and team member. The team member column was used to indicate who performed the services, including if any team members assisted. The log information is hand-written and was tracked by individual stylists. There are calculations on how much is due to the team member who performed the services. The documents also contain hand-written accounting of checks or Venmo payments given to the workers. The payments occurred about every two weeks, although some payments were a month apart.

At hearing, Senter testified that she operated IDP by herself as a sole proprietor. Over the years, she brought on independent contractors to assist with providing hair, make-up and skin services. She described them as a collective group of people that work together to provide these services. Most of the time, the independent contractors reach out to her and indicate they are looking for more work. To use wedding/bridal services as an example, one person is unable to do a dozen make-up applications and hair styles on their own. When they reach out to Senter, the workers are looking to join forces with a team so that they do not miss out on this work. In response to the Facebook post that indicated IDP was “hiring,” Senter testified that she was not seeking to hire employees but for others to join the IDP team as independent contractors.

As part of the onboarding process, Senter testified that she asks the worker about their licensure, what services they want to do, and she determines whether they fit the overall appeal of IDP guests. Senter provides them a key to the salon so they can access the salon whenever they need to for their appointments. The workers provide Senter with their availability, and the services are scheduled based on the availability the worker has provided. A client has the option to book online on IDP’s website or by calling the salon. Clients have the option to select different team members, and based on the services and availability, a client is able to book services with a specific team member. Senter does not assign bookings. When booked through the website’s online booking, the stylist receives a notification and has the ability to accept or decline an appointment. Workers have the ability to reschedule clients. They are not required to perform any certain number of appointments or services, they decide how much they want to work. The workers are allowed to switch their appointments amongst each other.

The workers are expected to have their own supply kits for on-site services. Senter explained that her approval, which is contained in the IC agreement, is only to make sure they carry supplies for diverse skin colors, tones and textures. She does not require the workers to purchase any certain brands. Senter testified that she has multiple professional discounts, and allows the workers to use her discounts to build their own kits. This is not required, but only available to them as an option to reduce their cost when purchasing supplies and products. The worker remains responsible for the cost of purchasing and replacing items in their kits.

Senter also testified that she has a shared supply closet for in-salon work. The workers are given the option to participate in sharing certain supplies, such as shampoo, color and developer, that Senter purchases in bulk with her professional discounts. The workers discuss and choose which products they want purchased for the shared supply closet. The fees that workers pay to IDP for services rendered is used to pay for rent, shared supply closet, and any other expenses the workers collectively agree to cover.

Senter informs new team members that she expects them to be professionals and they are in charge of their appointments, their work and ensuring they take care of their clients. She does not require the workers to train with her as they are all licensed to do the work. However, as she is the most experienced of the group, Senter makes herself available to the workers if they want her feedback. Ultimately, the workers are in control of how they perform the work. Senter testified that she does not have mandatory meetings for workers. In the past, she has hosted meetings prior to the wedding season to allow workers opportunity to discuss issues, ideas, or suggest changes or additions to the products, or the fee structure. The meetings are optional, arranged by Senter sending a group text message to determine when workers would be available. There is no penalty if a worker does not attend the meeting, other than they miss out on the information being shared.

Senter is not aware of any of the independent contractors listing IDP as their place of employment. She does not insure the workers. She does not supervise or direct workers to perform the services in any certain way, does not critique the work they do, or require them to redo work. The services and how they are provided is entirely determined by the team member and the client. When Senter is at the salon, she is with her own clients providing services.

During onboarding, contractors are presented with the IC agreement. The compensation section is blank when presented. Senter testified the workers have the ability to negotiate the pay structure with IDP at the time of signing. They can also request to modify it after signing, and she has done that with workers as well. If the workers provide services at the salon, they leave a portion of the fee to the salon as agreed upon in their independent contractor agreement.

Senter testified the client fees for services listed on the website were agreed upon by the workers. Senter inputs the fees in the booking system and the fees are visible to everyone including the clients. When a client clicks on a specific stylist, that stylist's pricing shows up on the online booking site. A stylist has the authority to charge their own fees for services, and some do have different pricing for different clients. Workers are allowed to bring assistants. She does not have any control over when or how much the assistants are paid, it is entirely between the assistant and independent contractor.

Senter testified that the work logs entered into evidence are logs the team members keep to track the services they provide, how much they collected in payments, and who worked on the services. They are accessible to the team members at the salon. It provides a way for them to cross-check each other's records, as they work as a team for certain services,

and ensure that services are not missed. When it comes to IDP paying the stylists, they fill out an “IOU” form after on-site or salon services, list what services were provided, how much they collected, and the manner in which payment was collected (card, check, IDP Square online payment system). Senter characterized this as the independent contractors “invoicing” IDP for the services they provided. Senter testified she pays within a two-week period, both to allow workers time to submit their IOUs and herself time to prepare the payments. If a worker requests payment sooner, she accommodates the request. At the end of the year, Senter issues 1099 tax forms to each independent contractor.

Senter testified the workers operate their own social media pages to market their individual services, separate and apart from IDP. She never asked the workers to stop operating under their own marketing pages. She did encourage workers to add IDP in their social media posts as a way to increase marketing and enable IDP clients to easily find their work. Senter testified that she orders IDP business cards in bulk for vendor events. She has told the workers they are free to use the business cards if they choose and as they see fit. Some have chosen to write their names on the cards or print stickers with their name and business pages to place on the IDP business cards. Others use the cards for appointment reminders for their clients.

Senter testified the non-compete language in the IC agreement is intended to protect the connections and high-end clientele she has grown in her 16 years of experience in the field. She believes these are her legitimate business interests to protect, while she helps the independent contractors grow their individual businesses. The non-compete language is not intended to prohibit them from working in the business. She has never enforced the non-compete clause.

Specific to Triplett’s role as salon manager, Triplett gave herself the title of “manager.” Senter allowed her to use the title because Triplett was a friend who was going through difficult personal issues, and she did not think it would have any significance other than giving Triplett a title she wanted. Triplett approached Senter to ask for additional work at the salon. Senter testified she gave her task-specific work, but Triplett had the option to decline any task Senter asked her to complete. Triplett assisted with organizational aspects of the salon, such as making spreadsheets, making and posting social media marketing, working on the website, product pickups, or creating marketing materials for vendor shows. The work was based on specific tasks, Senter would cap the number of hours she could spend on a task and Triplett determined how to complete the assigned tasks. There were no required hours Triplett had to work. Since Triplett is no longer associated with IDP, Senter testified that she has made attempts to harm her business.

CONCLUSIONS OF LAW AND ANALYSIS

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.¹ IWD’s Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.² IWD has adopted rules found at 871 IAC chapter 23.

¹ Iowa Code § 96.9(1).

² *Id.* § 96.11(1).

IWD initially determines all issues related to liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship.³ Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.⁴ An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96.⁵ If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than an employer-employee relationship is immaterial.⁶

An employer is defined as “any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment.”⁷ An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.⁸ The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”⁹ Employment includes service performed by “[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.”¹⁰

Whether a person is an independent contractor or an employee is a “factual determination based on the nature of the working relationship and many other circumstances, not necessarily on any label used to identify the parties in the contract.”¹¹ In other words, if the relationship of employer and employee exists, the parties' designation or description of the worker as an independent contractor is immaterial and of no consequence.

The right of control, as developed through the common law, is the principal test for determining whether a worker is an employee or independent contractor in the unemployment context.¹² Whether an employer-employee relationship exists under the usual common law rules is determined based upon an analysis of the individual facts in each case.¹³ IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.¹⁴

Under IWD's rules,

³ *Id.* § 96.7(4).

⁴ 871 IAC 23.19(6).

⁵ Iowa Code § 96.19(18)f; *Id.* 22.7(3).

⁶ 871 IAC 22.19(7).

⁷ Iowa Code § 96.19(16)a.

⁸ *Id.* § 96.19(17).

⁹ *Id.* § 96.19(18)a.

¹⁰ *Id.* § 96.19(18)a(2).

¹¹ *Pennsylvania Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 813 (Iowa 2002) (quoting *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 684 n. 2 (Iowa 2001)).

¹² *Gaffney v. Dep't of Employ. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

¹³ 871 IAC 23.19(6).

¹⁴ *Id.* 23.19.

The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.¹⁵

The right to discharge or terminate a relationship is “an important factor indicating that the person possessing that right is an employer.”¹⁶ If the discharging party may be liable for damages for breach of contract, the circumstances are indicative of an independent contractor relationship.¹⁷

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.¹⁸ “In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor.”¹⁹

Another factor includes the nature of the worker’s contract for the performance of a certain type, kind or piece of work at a fixed price.²⁰ Generally an employee performs the work continuously and his or her labor is primarily purchased, whereas an independent contractor undertakes the performance of a specific job.²¹ An employee is typically paid a fixed wage on a weekly or hourly basis, whereas an independent contractor is typically paid one sum for the entire work, whether it is paid in a lump sum or installments.²²

Independent contractors can make a profit or loss and are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed.²³ Independent contractors often have significant investment in real or personal property that they use in performing services for others.²⁴ Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.²⁵

An independent contractor follows a distinct trade, occupation, business or profession in which the worker offers his or her services to the public to be performed without the

¹⁵ *Id.* 23.19(1).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* 23.19(2).

²¹ *Id.*

²² *Id.* 23.19(4).

²³ *Id.* 23.19(3).

²⁴ *Id.*

²⁵ *Id.* 23.19(5).

control of those seeking the benefit of the worker's training or experience.²⁶ Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business, or profession, in which they offer services to the public, are independent contractors and not employees.²⁷ Professional employees who perform services for another individual or business are covered employees.²⁸

Upon review and consideration of record presented, the weight of the evidence supports the conclusion that the eight workers identified by IWD in the audit were independent contractors.

In this case, IDP's website and marketing refers to the group of make-up and hair stylists as a "team." Their presentation of wearing identical shirts with the IDP logo, may give the perception that these individuals are employed by IDP. Some of the employees expressed their belief that they are correctly characterized as employees. However, upon review of the evidence specifically regarding IDP's right to direct and control the work strongly indicates the workers are independent contractors.

At the onboarding process, the workers are provided with the IC agreement. They negotiate their pay with Senter, which is generally a percentage or set price based on services rendered. Senter's only expectation is that the stylists be professionals. However, she does not dictate or supervise how the workers complete their work. She does not discipline or reprimand them. Senter also does not require them to train with her, although she does offer her experience to provide feedback if the stylists request feedback. Senter does not require the workers to attend meetings or penalize them for not attending meetings.

The evidence also establishes that workers set their own hours for scheduling through the IDP website. IDP does not require them to work a certain number of hours or book a certain number of clients. Clients can book the stylists based on the availability they have provided. A client can request to book a specific stylist online, but ultimately the stylist can accept or decline the booking. The stylists also have their own clients and book directly with them, without the scheduling going through IDP's website. The stylists determine how much to charge their clients for the services they provide. While the QDSW responses indicated that IDP sets the pricing, this is in contradiction to what Senter testified. IWD knew of this inconsistency at the time of the audit but made no effort to obtain further information from the workers on the fees. Based on Senter's testimony, which the undersigned finds credible, the pricing for services was agreed upon by the stylists, or the stylists chose to charge a different price based on their perceived level of expertise. Senter's testimony further indicated that the different pricing appears on the website when a specific stylist is selected for a booking.

²⁶ *Id.* 23.19(2).

²⁷ *Id.* 23.19(1).

²⁸ *Id.*

The evidence is undisputed that stylists are responsible maintaining their own supply kits. Senter does not require any particular brand, but does approve the kits are apt for all skin colors, tones and textures. The workers replace their own tools and supplies. For in-salon work, some of the workers have agreed to participate in the shared supply closet. They are not required to do so but this is offered as a way to reduce costs for the stylists because it is cheaper to purchase product in bulk. The workers still pay for the supplies in the shared closet with the portion of the fee they pay to IDP. In the arrangement they have with IDP, the workers do not pay to rent a chair at the salon, but part of the fee they leave to IDP goes to pay the salon rent and other expenses.

Upon completion of services, the workers collect payment from clients, which they can collect by check, card, or IDP's online payment system. The stylists then invoice Senter for the work they performed by submitting an IOU slip. She uses these slips to pay the workers based on the fees structure that was previously agreed upon, either percentage or fixed fee amount.

The evidence shows the workers market themselves and direct clients to their business pages that are separate and apart from IDP. The separate social media pages that the stylists have are listed on the IDP website. This shows that stylists solicit and likely obtain clients through their own individual businesses. IDP gives the stylists the option to use IDP business cards, but the evidence shows the cards do not have individual stylists listed. Instead, the stylists either hand-write or place a sticker on the cards with their information, if they choose to use the cards at all.

The IC agreement contains a non-compete clause, but based on the evidence received, it is apparent this clause is not intended to prohibit stylists from working in their fields. To the contrary, Senter testified the workers also work at other salons, advertise their own businesses, without any control or input from IDP. The non-compete clause was intended to protect Senter's connections and clientele that she has built for herself. The clause has never been enforced against anyone associated with IDP.

Specific to Triplett's work as a salon manager, the undersigned also finds that her work in this capacity was task-specific. While Triplett claimed on the QDSW claimed she was paid for 10 hours a week, the logs submitted do not corroborate this claim. Her logs of work as a salon manager is sporadic and irregular, which tends to support Senter's testimony that Triplett was asked to complete specific tasks for the salon, but not expected to work any certain number of hours. Senter would allow her to complete the tasks and cap the number of hours she was willing to spend on the completion of any requested task. Most importantly, Triplett had the option to decline any task without consequence. Under the evidence presented, the undersigned finds that Triplett's work as a salon manager was that of an independent contractor.

For the reasons discussed, the totality of evidence presented in this case supports a finding that an independent contractor relationship existed between IDP and the eight workers identified in the audit. Accordingly, IWD's decision must be reversed.

DECISION

IWD's decision is REVERSED. IWD shall take any further action necessary to implement this decision.

Dated and mailed this 15th day of November, 2023.



Jasmina Sarajlija
Administrative Law Judge

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APPEAL RIGHTS

This decision constitutes final agency action. Any party may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing. Any party may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.²⁹

Case Title: ALLYSON SENTER D/B/A I DO PRETTY V. IOWA WORKFORCE DEVELOPMENT
Case Number: 24IWDM0005
Type: Final Decision

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "J. Sarajlija". The signature is written in black ink on a white background.

Jasmina Sarajlija, Administrative Law Judge