

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

Information provided indicated the firm is a dog grooming business. The worker performed services for the firm in 2017 as a part time receptionist. The firm reported the income on Form 1099-MISC, stating the worker signed a contract. The firm provided a copy of that agreement, it stated services were to be performed on a one year as needed basis. It was signed by both parties. The firm indicated minimal training was given, files were located and software programs were utilized for scheduling customers. The firm indicated her services included answering phones, scheduling appointments, check customer in and out, walking dogs out and on occasion she would clip dogs nails. Any major complaints were brought to the owner's attention. The firm provided copies of the timesheets submitted on a bi-weekly basis. These timesheets show the times clocked in and clocked out and the days worked. It indicated she performed services on an average of thirty hours per week. The firm indicated the worker chose her own hours. All work was performed on the firm premises. The firm indicated they provided the phone, files, credit card machine/register and computer. The worker provided office supplies and pens, pencils and notepads. She was paid on an agreement amount. (Timesheets showed she was paid nine dollars an hour, with a fifty cent raise given periodically. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as the firm's receptionist. The worker left to pursue her acting career.

The worker indicated she was trained how to properly run the front desk area as in processing payments and scheduling. The worker stated she had a set schedule of hours to come in and leave each day. All work was performed on the firm premises. The firm provided all equipment. The worker indicated she was paid by the hour on a biweekly basis. She agreed the customer paid the firm. she was represented as an employee of the firm. She agreed she quit.

ANALYSIS

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.

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.

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. All services were performed on the firm premises, under the firm's business name. The fact services may have been part time or on a flexible basis, does not make a person an independent contractor. The worker was paid by the hour, with recurring pay raises given. Timesheets provided showed the hours clocked in and out, another indication of an employer/employee work relationship. The customer paid the firm for the services received at rates determined by the firm.