

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.5 Receptionist	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 payer is an individual who created a limited liability corporation in business of dog grooming which engaged the worker as a sub contract laborer from 2011 to 2012. This was pursuant to a written agreement between the parties.

The firm stated the groomers were expected to be trained when they were contracted. The worker stated she receive grooming training on one dog but never performed any grooming services for the firm. The worker stated she was supposed to be fully trained to be a groomer but the firm's owner did not want to teach her. The services the worker provided to the firm were a receptionist and bather. The worker received daily instructions regarding the services to be performed for the firm. The firm stated as dogs came in the groomer is given the choice of clientele. The firm stated the workers arrive at the times they agree they would be available. The worker stated she provided services to the from 8:00 AM to 4:00 PM, sometime the firm would allow her to leave early, but ultimately it was up to the firm as to what time the worker came in and left. The worker was required to wear a uniform, adhere to the firm's policy on personal hygiene, and how the firm's equipment was to be handled. The workers were subjected to random drug testing and ongoing background checks. The firm stated the groomers and the clients conferred regarding determining the methods by which the assignments were performed. The worker stated the firm's owner determined the methods by which the assignments were performed. The sub contract labor agreement submitted by the firm proved the firm determined the methods. Both parties agree the firm's owner was responsible for problem resolution. The firm stated the worker was required to submit client cards for each of the firm's clients. She performed the services on the firm's premises 100 percent. The relationship between the parties was continuous, as opposed to a one-time transaction. Both parties agree that the worker was required to perform the services personally. According to the firm her services were an integral and necessary part of the services the firm provided to its customers as a dog groomer. The firm hired and paid any substitutes or helpers.

The firm furnished the worker with work space, supplies, house dryers, tubs and cages, at no expense to her. The firm stated the worker was to furnish clippers, scissors and brushes but none of those tools would be used as a receptionist or bather. The worker did not lease equipment. The worker stated she did not have to provide anything to perform services to the firm. The firm determined the fees to be charged to its clients. The worker did not incur significant business expenses while performing services to the firm. Although the firm stated she could have if she had equipment and maintenance. The firm stated the worker was paid commission based on \$8.00/hr. The worker stated she was paid an hourly wage. The firm's customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. In the sub contract labor agreement it was made clear the clients were the clients of the firm, and not the worker's. Both parties agree that the worker did not perform the services for others. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. In this case, the worker not only did not advertise her services, but she completed an application for a job on November 14, 2011, and on November 18, 2011 signed a sub contract labor agreement with the firm. She was required to perform the services under the name of the firm and for the firm's clients. The firm provided a copy of a sub contract labor agreement believing that this should be a clear indication that the worker agreed that she was an independent contractor. However, Federal guidelines stipulate that this agreement in of itself cannot be considered in the SS-8 determination process, as we are obligated to base our decisions on the actual relationship between the parties, which is the controlling factor, and not the terms of the contract either oral or written. The relationship between the parties ended when the firm terminated resigned.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she completed an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.