

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC Pet Handlers/Caregivers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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**

The worker initiated the request for a determination of her work status as a pet groomer in tax years 2008 through 2017. The firm's business is described as pet grooming.

The firm's response was signed by the CEO. The firm's business is described as pet grooming and the worker performed services as a pet groomer.

The firm and worker agreed that there was no specific training and instructions given to the worker and that the job assignments/appointments were provided by the firm on a daily basis. The firm indicated the worker determined the methods by which the services were performed; the worker disagreed. Any problems or complaints encountered by the worker were directed to the firm. The firm indicated the worker was responsible for the resolution; the worker stated the firm resolved any issues. Both parties concurred that the services were rendered under the firm's business name and at the firm's business location. The worker stated she was required to complete a worksheet for each dog groomed and was required to attend unpaid meetings. The firm and worker agreed the worker was required to perform the services personally.

The firm provided the place of business with work table, bathtubs, shampoo, and towels; the worker furnished her personal grooming tools. The firm and worker acknowledged the worker did not lease equipment; but, she did incur expenses for maintaining her tools and the upkeep of her uniform with the firm's name. The firm paid the worker a commission; the customers paid the firm. The firm responded the worker was covered under the firm's workers' compensation insurance policy. Both parties agreed that the firm established the level of payment for services provided or products sold. The firm indicated the worker was at risk for a financial loss or damage to equipment; the worker disagreed.

There were no benefits extended to the worker other than bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

Both parties provided copies of the contract which provided the following: the services are rendered under firm's name; the worker was to wear a shirt with the firm's logo; the firm would pay the worker a 50% commission; tips paid from credit cards and checks would be paid in cash at end of month; the 'special provision' section indicates that anything put on social media will be grounds for termination or contacting anyone while under the influence, with either offense resulting in a \$500 fine to be withheld from the worker's final pay. The worker provided a copy of the Time Off Request Form. The firm provided copies of Form W-9 and copy of text message conversations.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 a person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee.

"Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.