

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Animal Bather	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

The firm is in the business of pet grooming. The firm engaged the worker as a shampooer/pet groomer. It reported the worker's remuneration on Forms 1099-MISC for 2014 through 2017.

The firm submitted the agreements between the parties dated October 31, 2014 and April 7, 2015, stating, among other things: The worker is engaged in providing dog grooming services with her principal place of business at her home address; the worker is or remains open to conducting similar tasks or activities for entities other than the firm, and holds herself out to the public to be a separate business entity; it is the parties' intention that the worker shall have an independent contractor business and not be an employee for any purposes; the worker shall retain sole and absolute discretion in the manner and means of carrying out her activities and responsibilities under this agreement; the worker will work on an as-needed daily basis while maintaining facility cleanliness; the initial contract will be for a three month period with subsequent quarterly reviews in order to extend or terminate the current contract; the books and records related to the scope of work set forth in this agreement shall be maintained by the worker at her place of business and open to inspection by the firm during regular business hours; the worker shall be responsible to the management of the firm; the worker will not be required to follow or establish a regular or daily work schedule; the worker shall supply all necessary equipment, materials, and supplies; the worker will not rely on the equipment or offices of the firm for completion of tasks and duties set forth in this agreement; any advice given to the worker regarding the scope of work shall be considered a suggestion only, not an instruction; the firm retains the right to inspect, stop, or alter the work of the worker to assure its conformity with this agreement; compensation will be given as a commission based percentage rate for each completed unit at the agreed price with respect to embedded station rental fee, equipment lease, and general expendable supply consumption; compensation will be payable to the worker upon receiving an invoice and paid on a weekly basis, to be paid on Tuesday; the worker recognizes and understands that she will receive an IRS 1099 statement and related tax statements; the agreement may be terminated prior to the completion or achievement of the scope of work by either party giving five days written notice; for a period of one year after termination, the worker shall not solicit any customers or clients of the firm; for a period of one year after termination, the worker shall not solicit any of the firm's "employees" for the purpose of any outside business; the worker and firm agree to maintain separate accounts in regards to all expenses relating to the scope of work; the worker is solely responsible for payment of expenses incurred unless provided otherwise in writing by an officer of the firm; all "works for hire" developed or performed by the worker in the scope of work are assigned to the firm and shall be the sole property of the firm for all purposes.

The firm stated that the worker obtained her job through a recommendation. The worker picked her work assignments from the pets scheduled for the day. Both parties determined the methods by which the worker performed her services. The worker verbally communicated with the firm when the pet was serviced, and listed what services were provided at the specific price. The worker usually opened the shop, logged in pets, annotated customer required services, caged animals, prioritized dogs, and began services in order until the conclusion of her services. The worker performed her services on the firm's premises. She was required to perform her services personally. The worker could have hired helpers.

The firm stated that it provided the facility/utilities, dryer, towels, and soaps. The worker provided her brushes, combs, clippers, blades, and trimmers. The worker leased space with compensation proportionate to supplies, etc., consumed. The firm paid the worker on a commission basis. The worker established the level of payment for services as she could determine if additional services were required to fully service pets. The worker's financial risk involved her responsibility for the upkeep or damage to equipment; she was also responsible for any medical attention required if there was an injury to the animal.

There is no evidence submitted showing the worker advertised her services or maintained a business presence. The worker terminated the work relationship.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, 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. If a firm has to make a worker "understand" or even if a worker "agreed to" being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker's status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the worker was responsible to the management of the firm; she was subject to quarterly reviews. The firm retained the right to inspect, stop, or alter the work of the worker, showing 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 ensure its customers' satisfaction with the work. The worker performed her services on the firm's premises. 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. The agreement stated that the worker was not required to establish or follow a regular schedule; however, the worker usually opened the shop, showing she was required to be on the premises at a time designated by the firm on a routine basis. 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. There is no indication that the worker engaged and paid others to perform services for the firm on her behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 worker utilized her personal grooming tools. 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. Customers paid the firm directly at prices established by the firm. It paid the worker on a commission basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The absence of a lease agreement with a set amount due shows the risk of loss was absent. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. The worker was not engaged in an independent enterprise, but rather the shampoo and grooming services performed by the worker were a necessary and integral part of the firm's pet grooming business. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. These facts show that the firm retained control over the work relationship and services of the worker.

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.