

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 firm is a pet sitting/walking/boarding business. The worker was engaged to perform services as a dog walker. The firm provided a copy of the independent contractor agreement signed by both parties, indicating that the worker would perform her services in the capacity of an independent contractor. As a result, the firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker was required to perform her services within the scope of the firm's policies and guidelines. The worker obtained work assignments by checking in daily to a pet walker app, where she could accept or decline available jobs based on her availability. Both parties determined the work methods by which to perform the services. Problems/complaints were reported to the client and/or firm for resolution purposes. The worker performed her services personally in her residential city.

The clients (pet owners) provided the leashes, harnesses, snacks, and any other items needed to perform the services. The worker did not incur work related expenses. The firm paid the worker on a piecework basis (per completed job) for her services. Clients paid the firm for services rendered. The worker did not incur economic loss or financial risks related to her services.

The firm covered the worker under worker's compensation insurance. No information was provided to show employment benefits were made available to the worker. The worker did not perform similar services for others, and there was no information provided to support that the worker advertised her services to others while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed her services under the firm's guidelines and policies. The worker's services were performed personally, for the firm's customers, and she represented the firm in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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 the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov