

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 limited liability company that operates a pet grooming business. The firm originally purchased this company from the worker. The firm then engaged the worker to continue services as a pet groomer for their business.

The worker was already qualified in the service and did not require any training. The worker stated she received her assignments from the firm. The worker stated the firm determined how the assignments should be performed and the firm stated the customers determine how the services should be performed. The worker stated she performed services Tuesday through Saturday from 7:30 to 3:30 and the firm stated the worker set her own schedule. The worker performed her services at the firm's location. The worker stated she was required to perform her services personally and the firm stated the worker was not required to perform her services personally.

The firm provided the location, bathtub, bathing table, shampoo, water, dryers and cages. The worker provided her own personal hand tools. The worker did not lease any space from the firm. The worker was paid on a commission basis. The customers paid the firm for the services they received. The worker stated the firm established the level of payment for the services provided and the firm stated the worker established the level of payment.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. There was a non-compete between the two parties. The worker stated she was represented as an employee and the firm stated they held the worker out as an independent contractor.

In the purchase agreement between the firm and worker there was a non-compete clause. This clause stated the following:

The seller (the worker in the instant case) whether as an individual, or corporation and its shareholders, jointly and severally agree NOT to engage in a Pet Grooming business within a radius of (20) ten miles for a period of (10) ten consecutive years from the close of this sale; nor aid or assist anyone except the Buyer (the firm in the instant case) to do so within these limits; nor solicit in any manner any past or present customers of the business; nor have any interest directly or indirectly in such a business, excepting as an employee of the Buyer; and further agrees to abide by the terms of this covenant for the benefit of this or any subsequent Buyer.

The Addendum #1 consisted of the following:

Re: Employment

The seller (the worker in the instant case) shall be compensated for grooming on a commission rate of a 50/50 split.

There were several of the firm's invoices which demonstrated the worker was paid on a commission rate of a 50/50 split.

Analysis

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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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 the instant case, the worker was engaged as a pet groomer for the firm's pet grooming business which demonstrated the worker's services were integrated into the firm's daily operations.

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. In the instant case, the firm set the worker's commission rate in the agreement the agreement between the two parties which showed financial control.

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. In the instant case, the worker could not suffer a significant loss as operating their own business.

The worker is an employee according to common law. The information provided by both parties showed the worker was already trained in this profession and did not need any training on how to perform her services. The worker did receive her appointments according to the appointments made to the firm which showed control over the worker. The worker's schedule was dependent upon the appointments that were made to the firm which showed control over the worker. It was the firm that had the financial investment as the firm provided the location, supplies and all large equipment the worker needs to perform her services. The fact the worker provided her own personal hand tools is a common practice in this industry and does not lean toward the worker being an independent contractor. The fact the worker performed pet grooming services for the firm's clients demonstrated the worker's services were integrated into the firm's daily operations. The fact the worker was required to sign a non-compete is something only an employee should sign.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989