

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Dog Grooming	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 dog grooming. The worker was engaged by the firm as a dog groomer. The firm reported the worker's remuneration on Forms 1099-MISC from 2013 through 2017.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. If problems or complaints occurred, the worker contacted the firm for resolution. The worker provided an invoice for each dog that she groomed. She performed her services on the firm's premises. The firm stated that the worker made her own schedule and that she was not required to perform her services personally.

The firm provided the property. The worker provided her own grooming tools. She did not lease space. The firm paid the worker on a commission basis. Customers paid the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The worker did not advertise her services or provide similar services for others during the same time period. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, although the firm relied upon the worker's prior training and experience to perform her services, it was responsible for resolving any problems or complaints that may have occurred, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm stated that the worker was not required to perform her services personally; however, there is no indication that the worker could engage and pay others to perform services for the firm on her behalf, which presumes 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, lease space, 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. The worker provided 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. The firm 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. 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. 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. The worker performed her services under the firm's name. She was not engaged in an independent enterprise, but rather the grooming services performed by the worker were a necessary and integral part of the firm's dog 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. Although the firm did not make benefits available to the worker, the worker terminated the work relationship without incurring liability or penalty. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. 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.