

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Dog Groomer	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 worker initiated the request for a determination of her work status as a dog groomer and answering phones in tax years 2013, 2014, 2016, and 2017. The firm's business is described as a dog grooming business.

The firm's response was signed by the owner, a sole proprietor. The firm's business is dog and cat grooming services. The worker performed services as a pet groomer which included bathing, drying, haircuts, and nail trims.

The worker indicated that she was given specific training and instructions on how to run the shop in the absence of the owner. The job assignments were given face-to-face by the firm. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the shop on a part-time basis. The worker stated that she was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, the worker was not given training and instructions. The job assignments were from walk-ins, phone calls, and word-of-mouth. The methods by which the work assignments were performed was determined by the worker and the worker was responsible for the resolution of any problems or complaints. The worker's services were rendered at two different firm-locations; as well as, working for others. The worker was not required to perform the services personally; any substitutes or helpers were hired and paid by the worker.

The worker responded that the firm provided shampoo, dryers, tables, and phone; the worker furnished her clippers and blades. She did not lease equipment, space, or a facility and did not incur expenses in the performance of the job. The firm paid the worker a commission; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker stated she was not at risk for a financial loss in this work relationship. The firm established level of payment for the services provided.

The firm's response indicated the firm provided the store front locations, kennels, tub, dryer, and table. The worker furnished additional shampoo, scissors, clippers, cologne, smocks, a cell phone, and advertising. The firm responded that the worker did lease equipment, space, and a facility. The terms of the lease was per the contract, that the commission payment went towards the lease payment. The worker incurred expenses for sharpening tools and maintaining her equipment. The worker was paid a commission and piecework. The customers paid the firm and worker; the worker kept her tips and the portion of the fee. The worker was not covered under the firm's workers' compensation insurance policy. The worker was at risk for a financial loss in this work relationship due to insurance, tax preparation, paying income taxes, loss and damage of scissors, advertising, medical bills from dog bites, hiring other workers, vet bills, etc. The worker established level of payment for services provided or products sold.

The firm and worker concurred that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. Both parties acknowledged the worker was performing same or similar services for others during the same time frame. The worker and firm also agreed that the worker did not advertise.

The firm provided a copy of the contract between the firm and worker dated August 2013. The contract contained the following: the firm is pet grooming and the worker has qualifications to assist in the business; the worker was to provide pet grooming services at firm location; the worker was to detail services rendered; the worker was to use the firm's till and the firm will take all payments for services; the worker was to receive payment on a weekly basis; all fees and payments for services rendered are run through firm's point-of-sale systems for processing; the worker was to provide grooming services as authorized by the firm, according to industry standard and the firm's standards; the appointments were to be entered into the firm's central appointment book; the worker was to provide a two-week notice to firm when taking time off; the worker agreed to basic prices for grooming services with price adjustments needed to maintain firm's facility and cover operating costs; and, as part of the rent, the firm was to provide grooming facility, utilities, central phone, credit card machine, computer, basic maintenance of the firm's property, air dryers, tub, garbage, and client kennels; and, a covenant not-to-compete for one year. The worker indicated she did not recall signing a contract.

The firm provided a copy of a questionnaire that is similar in context to Form SS-8. The worker acknowledged she was provided the questionnaire and was asked to modify her responses to satisfy the firm.

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.

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 fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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 the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 reference 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 and that its contractual obligations were met. 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.