

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC Office Worker for Pet Grooming

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 in the business of providing pet grooming, boarding and dog daycare. The worker was engaged to provide pet care. She initially received a 2017 Form W-2 for her services; she was also issued a 2017 1099-MISC. She continued to work in 2018 as well. There was no written agreement.

The firm provided instructions on how to schedule appointments, bathe dogs, and use the computer system. The worker received her pet care assignments from the firm who scheduled regular work hours, what work would be done and where in the shop. Each party indicated that the other determined the methods by which the assignments were performed; both agreed that the firm would be contacted if any problems or issues arose. There were no required reports. The worker opened the shop, scheduled appointments, checked clients in/out, input information into the computer as well as did laundry, dishes and cleaning. The firm noted that her work routine varied. Both parties agreed that all services were performed at the firm's premises. The firm noted that the worker was required to personally provide the services. Both agreed that only the firm hired and paid any substitute workers.

Both the firm and the worker agreed that the firm provided the tubs, cleaning supplies, phone lines, internet, and scheduling book. The firm noted that the worker provided a phone and her transportation. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker quit.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm operated a pet grooming/boarding facility and engaged the worker to supply labor as needed for its operations. The firm provided the worker with instructions regarding her duties, even if just initially. The firm scheduled her work hours. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. 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. The worker's services for the firm were all performed at the firm's location, also a factor that suggests the firm's ability to retain control over the worker. The worker's services were continuous and not a one-time event. 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.

Factors that illustrate whether there is 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. It was the firm that had the investment in the facility and equipment on which to incur a profit or loss. The worker simply received an hourly rate of pay and had no economic risk other than the loss of her compensation. 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. The worker was engaged to provide labor for the firm's business. When doing so, the worker was not engaged in a separate business venture. 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 firm had indicated that the worker was treated as an independent contractor according to the worker's request. In *Bartels v. Birmingham*, 332 U. S. 126, 1947-2 C. B. 174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties. In other words, the type of relationship cannot simply be agreed upon if the facts do not support that type of work relationship.

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 see Publication 4341 for guidance and instructions for firm compliance.