

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC Pet Groomer

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. The worker was engaged as a pet groomer. The worker received a Form 1099-MISC for her services in 2013 through 2017. There was a written agreement provided by the firm but it was unsigned.

The worker was to complete all grooms according to clients' specifications and within three to four hours. The groomers' assignments were in a schedule book where the firm's office help would input the appointments when clients' called. The firm scheduled appointments for the worker based on her availability schedule. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker submitted a weekly breakdown of grooms performed and how much she would be paid by the firm. The worker started in the morning, performed grooms, and her day ended when grooms were completed. All her services were performed at the firm's premises. There were some meetings. Both parties agreed that the worker was to provide the services personally.

The firm provided facility, tubs, shampoo, towels, dryers, grooming tables as well as the office worker who scheduled appointments. The worker supplied the clippers, scissors, brushes, grooming clothes, and upkeep of equipment. The firm indicated that the worker paid rent in cash. The worker agreed but the rent was paid after the relationship that generated the 2017 1099 ended. Both agreed that the worker was paid commission; the firm noted that she had no economic risk. Both agreed that the customer paid the firm. The firm set the prices for services though the firm noted that the worker established 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 firm disagreed. Both parties agreed that 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. 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.

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 obtained the clients and scheduled the appointments according to the worker's availability. 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. Her 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. In addition, the worker worked on a continuous basis throughout the years involved. 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. 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. The worker was paid a commission on the grooms which she reported to the firm and she was paid on a weekly basis. Customers paid for the services through the firm's 'common cash drawer.' She could make more or less depending on how much she worked; however, the opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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. There was an unsigned written agreement; however, the firm's belief 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 worker was a pet groomer engaged to provide those services to the firm's clientele. 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.

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.