

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Pet Handlers/Caregivers	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

Information provided indicated the firm is a Home and RV store, that also offers grooming and boarding services on premises. The worker had been contracted to run the groom shop. They have had a independent contract agreement since November 2014. The firm has continuously reported the income on Form 1099-MISC. In 2017 and 2018 the pay documents were issued to her business identification number. The firm converted the worker to employee status in 2018, thus issuing Form W-2 under her SSN.

Work Classification determinations cannot be performed on business to business transactions. Therefore, this determination will cover only the income and services reported on Form 1099-MISC under the worker's SSN Number (tax years 2014-2017).

The firm had indicated the worker had been contracted to manage their groom and boarding shop. She was given full rights to conduct the shop as she saw fit. She was in total control of the business. The firm did offer 2 entry fees to any advancement training classes. Work assignments were through a scheduled client list she maintained, and serviced any walk-in clients. She resolved any issues, but would enlist the owners if necessary. The worker would report the end of day sales to the firm. The firm indicated the work was performed on the firm premises. The firm indicated the worker did not lease the space, equipment or materials. The firm indicated the worker would hire and pay any helpers through her business. The firm stated they provided the premises, furniture, fixtures, shampoos, and conditioners. She provided her own grooming tools and office supplies. The firm paid for blade sharpening. The worker was paid on a commission basis. The customer paid the firm. The firm indicated the shop was run under the firm's business name. The worker was unable to run the shop effectively and agreed to become an employee. She was fired after thirty days.

The worker agreed she was parlor manager and groomer for the firm. The worker indicated work assignments were determined threw the receptionist. She stated she was scheduled for a forty hour work week. All services were performed on the firm premises. The firm provided tubs building, shampoos etc. She provided her own personal grooming tools. The worker indicated she was paid on a commission basis. The customers paid the firm. The worker indicated there had been a non-compete clause in the contract. The worker indicated she was later changed to just a groomer position. At the time she submitted the SS-8 she was still working for the firm.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. All work was performed on the firm premises, to ensure the success of the firm's business, for the firm's clientele. The fact the worker had the autonomy to manage it without interference from the firm, doesn't mean, they did not have the right to direct the services in order to protect their investment. This was evident by the fact in 2018, they hired her as an employee, due to the fact the management services were not done to their satisfaction.