

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC Pet Handlers/Caregivers

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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a pet care service business providing pet sitting, dog walking, and pet taxi services. The worker was engaged under a written agreement with the firm from February 2011 to July 2018 as a pet care provider. The worker's duties included pet sitting, dog walking, and pet tax services and occasionally she performed administrative tasks. The firm believes the worker was an independent contractor (IC) while performing services for them because the jobs were offered to the worker and she could accept or decline them, even on the same day; the time frame and tasks were determined by the client; and the worker was free to obtain other jobs. The firm reported the worker's earnings on Forms 1099-MISC.

The firm states they provided no training or instructions to the worker with the exception of possible clarification on what the clients' requests were and guidance on setting up pet sitting software. The worker let the firm know when she was available to work and the worker was given a schedule with the client requests; The firm states the worker could decline any assignment at any time. The firm states the clients determined how the worker performed her services and the worker was required to notify the client and their company if any problems or complaints arose for their resolution. The firm did not require reports of the worker but the firm states that the worker was asked to send an email update and /or text message to clients after completion of the services because the clients requested notification. The worker's routine varied each day depending on requests that came in. The firm states the worker could have had any number of visits or she could have had no visits depending upon what jobs were available and how much the worker wanted to do. The worker was required to personally perform her services at the firm's clients' locations for pet care services and in her home for administrative tasks. The worker was not required to attend meetings. If the worker declined a job offered by the worker, the firm was responsible for the hiring and paying of replacements.

The firm provided the pet sitting software and a toy wand for the cats if the worker wanted one. The firm states the worker incurred no expenses except for fuel for her vehicle. The clients paid the firm for services rendered by the worker and the firm paid the worker on a piece work basis. The firm states they and the client established the level of payment for the services provided.

The worker did not perform similar services for others and she did not advertise her services to the public. The firm states they represented the worker to their clients as a contractor performing services under their business name. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship.

Analysis

As in this case and 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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. If a business passes on the customer's instructions about how to do work as its own, the business has, in essence, adopted the customer's standards as its own. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with some freedom of action, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needs to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

The firm states the worker could accept or reject any job assignment offered to her. However, the worker could not refuse an assignment without jeopardizing her relationship with the firm or jeopardize the assignment of future jobs.

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

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement or the filing of a Form W-9), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement 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.

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.