

**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 worker initiated the request for a determination of her work status as a pet groomer in tax year 2018, for which she received Form 1099-MISC. In this position she was checking clients in and out, cleaning the salon, answering the phone and making appointments, record filing, and cleaning the salon. The firm's business is described as pet grooming and spa services.

The firm's response was signed by the owner. The firm's business is a full-service pet grooming, bathing, skin care salon; the worker was a pet stylist (grooming, bathing, and styling pet's hair).

The worker indicated the firm had given her specific instructions as to set hours and how to groom the dogs. The job assignments came from the firm's owner; and it was the firm that 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 daily routine was to come in for 8:30am and open the business, call clients, groom clients' pets, check pets in and out, answer the phone, take payments, clean the shop, and close the firm's shop. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, there was no specific training and/or instructions given other than the styling standards for the firm's salon. The job assignments came from customers calling in and scheduling the grooming appointment. The stylist 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 firm's business location. The firm indicated the worker was not required to perform the services personally; and, any additional personnel were hired and paid by the worker.

The firm and worker concur the firm provided the business location, bathtub, grooming table, cages, and blow dryers; and, the worker furnished clippers, brushes, sheers, combs and colognes and incurred the expenses for sharpening sheers and blades. Both parties agree the worker did not lease equipment, space, or a facility, the firm paid the worker a commission/piecework, and the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm established the level of payment for services provided or products sold.

The firm and worker acknowledged there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed stating she was told verbally that she could not groom any dogs outside of the firm's business. The worker indicated she was responsible to hang up flyers for the firm which were provided by the firm. The firm terminated the work arrangement.

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## Analysis

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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 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.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

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.