

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 pet retail and grooming business. The worker performed services as a pet groomer for the firm in 2018. The firm reported the income on Form 1099-MISC at year end. The firm provided a copy of the independent contract agreement. The firm indicated the groomers make their own appointments, or customers either call or walk in and make appointments. The store is open seven days a week from nine am to seven pm, and they set the hours and days they want to work from there. Services are performed on firm premises. The firm indicated if they needed helpers, they would pay them. The firm provided the bath tubs, dryers, and grooming tables. The workers provided their own grooming tools. They maintain their own tools. The firm indicated they are paid on a commission basis. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker quit.

The worker indicated the firm had full control over her hours and dictated who she worked on and set all fee structures etc. She was instructed to how to groom to their standards and how to clean to their standards. She received work orders through a scheduling on a shred computer all done at the front desk. She is to report to the firm if there are any complaints. Her hours were set by as many appointments that were scheduled for the day. She agreed she performed services on the firm premises. She agreed the firm provided bathtubs, dryers, kennels, water, table and cubbies. She provided her grooming tools, bandanas and shampoo. She indicated shampoo costs were divided evenly between all groomers. She agreed she was paid on commission and the customer paid the firm. The firm determined the rates charged to their customers. Either party could terminate the work relationship without incurring a penalty or liability. All payments went through the front desk. She was represented as an employee of the firm. for one year she could not solicit any of the firm's customers. She indicated she quit due to how she was being compensated.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

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. The information provided indicated all services were performed on the firm premises, under the firm’s business name. The appointments were made through the front desk staff. The firm determined the rates charged. The clients paid at the front desk. An independent pet groomer, would have lease space at the firm facility, would have scheduled all clients, charged what they wanted (to include to be in competition with the firm’s prices) and collect directly from those clients. They would pay a set monthly rental fee, and would never be paid on a commission basis. In the instant case the firm has the financial investment in the franchise, not the worker. The firm is licensed to operate a business, not the worker. The services performed are a necessary an integral part of the success of the firm’s business.