

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. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is a dog and cat boarding and grooming business and the firm states the worker was engaged on certain days as a 1099 contracted dog groomer and certain days she performed as a W-2 kennel attendant. The firm states a schedule was done one month in advance and the worker knew if she was in the kennel or performing services as a groomer. The worker signed a subcontractor form stating that as a pet groomer she would report her earnings to the IRS and would be responsible for the payment and reporting of state and federal income taxes. The firm reported the worker's earnings as a pet groomer on Form 1099-MISC.

The firm states the worker was her own contractor for grooming and therefore, did not require training or detailed instructions from them. The firm states the worker told them the days and the number of dogs she wanted to do and her routine was determined by this. The firm states the worker resolved any complaint or problems that arose. The firm states the worker was not required to submit reports to them or attend meetings. The firm states the worker hired and paid any substitutes or helpers needed.

The firm provided all grooming supplies such as shampoo and a room which to perform services. The worker did not lease a space from the firm. The firm states the worker incurred expenses for taxes and workers' compensation. The firm states the clients paid the worker and the worker received a commission for the performance of her services. The firm believes the worker could incur a loss due to loss or damage of her own equipment. The firm states the worker established the level of payment for the services provided.

The firm states the worker was not eligible for employee benefits as a groomer. The firm states the worker advertised her services via a business card and she rebooked pets. The firm states the worker was represented as a contractor to the clients handing out her own business cards. The worker terminated the work relationship.

In a subsequent conversation with the firm, they state that in June 2018, their existing contracted groomer left and the worker stated she wanted to leave the kennel area of their business so she began grooming services. The worker had her own business and business cards. The cards had her name and her personal phone number. The firm does not believe the worker has her own business name. Both the firm and the worker set up appointments and when they set up an appointment, they put it on the worker's schedule. The worker told the firm the days, hours, and number of dogs she wanted to groom. The worker could reject any customer or grooming. The worker would call the customer if she had to reschedule an appointment. The worker had access to their computer system so she could get client info to call customers to reschedule. The worker was the only groomer engaged by the firm. The worker did not rent space from the firm; the worker wanted to get a higher percentage/commission instead. Grooming prices were set by the worker and they could not change this amount. The firm's website indicates the price of grooming services dependent upon the weight of the dog being groomed. The firm states that if the worker charged extra (or less), she could do so, she only had to document how much she charged and why. The worker was not required to follow the firm's employee handbook. The clients paid the worker and she provided an accounting to the firm on an Excel spreadsheet as to prices charged along with the date, owner's name, and dog name. The worker left the firm company to work for another company. The worker worked for two other 1099 jobs since she left.

Analysis

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, the worker was experienced in this line of work and did not require training or extensive instructions or supervision from the firm. The firm afforded the worker with a great amount of freedom while performing her services and when and how she performed those services. Some of this may have been because of the worker's extensive experience and some of it may have been the personal relationship the worker had with the firm's owner. However, the need to direct and control a worker and her services should not be confused with the right to direct and control. In fact, many individuals are hired due to their expertise or conscientious work habits. The worker performed her services on behalf of and under the firm's business name rather than an entity of her own. This gave the firm the right to change the worker's methods and to direct the worker to the extent necessary to protect their financial investment, their business reputation, and their relationship with their clients.

Independent contractors are truly independent of a firm and a firm's business. Some of the characteristics of independent contracts are that they are self-employed and will not consider a firm as their boss, they will have a contract for each job, they will carry their own insurance, they will pay their own helpers and labor costs, they will not have to personally perform their services but have the ability to have anyone they engage perform services since that person would be representing the subcontractors business, and they would have their own business bank account and credit lines. Independent contractors will file tax returns and conduct themselves as real businesses. Independent contractors will dictate what services their business offers and how they process and perform those services and how much it would charge for those services. A firm does not dictate how a worker will operate his or her own business, what services that business will offer, and what his or her responsibilities are. They will not be required to provide an accounting to the firm regarding the clients they serviced, what they charged, and the services they performed. We did not find that the worker in this case had this freedom or autonomy. There was no evidence presented and through our thorough research from various sources available to us, found no evidence that the worker operated a business, advertised her services to the public, had obtained a business license or had a business registration in the state which she performed services.

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. While the worker provided her own hand tools, this is not considered a significant investment. 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 did not lease or rent a space in the firm's facility. When there is a formal and valid lease agreement and the worker must pay a rental fee whether he or she works or collects fees, an opportunity to incur a loss is present. That did not happen in this case.

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. 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.

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

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.