

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

The worker submitted a request for a determination of worker status in regard to services performed for this firm, from March 2018 to May 2018, as a dog walker. The firm issued the worker Form 1099-MISC for the year in question. The worker filed tax Form SS-8 as she believes she received the 1099-MISC in error.

The firm's response states its business specializes in dog walking. The firm has a pool of clients in the service area and have contract workers to service the clients within those pools. The firm stated that the worker was contracted to perform services as dog walker. There was a written agreement between the two parties.

The worker states that the firm provided three days of initial training. The worker was supplied a list of dogs for the day and could choose her own order of accomplishing the tasks. Problems/complaints were reported to the client and/or firm for resolution purposes. The worker performed her services personally in her residential city.

The firm provided dogs, clients, and online schedule tool. The worker did not incur work related expenses. The firm paid the worker on a commission (per completed job) for her services. The firm established the level of payment for the services provided or the products sold. Clients paid the firm for services rendered. The worker did not incur economic loss or financial risks related to her services. The worker did not lease any equipment, space, or a facility from the firm.

The worker received no benefits from the firm. The work relationship could be terminated by either party without incurring a liability or penalty. There was no agreement prohibiting competition between the parties. The firm indicated that the worker performed similar services for others. The firm was not aware if the worker advertised. The worker was represented as a contractor to its clients. The worker stated she was fired from the firm.

Analysis

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 they have the right to do so.

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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

Therefore, the payer's statement that the worker was an independent contractor 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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customer served, required the worker to report on services performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Training a worker is characterized by: requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods. The training of a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. In this case, The firm ultimately determined the methods by which assignments were performed and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

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 payer's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, we conclude that the payer 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 payer can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.