Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05PHC Pet Handlers/Caregivers	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 submitted a request for a determination of worker status in regard to services performed for the firm from June 2015 to January 2019 as a yard manager. The services performed included coordinating duties of dog handlers, interacting with dogs, feed and water dogs, and clean the dog yard. The firm is a real estate business. The firm issued the worker Form 1099-MISC for2 016, 2017, and 2018. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC.

The firm's response, states it's a dog daycare, boarding and grooming, family owned and operated business. The services performed included playing with dogs. The worker was classified as an independent contractor as independent contractor forms and an assumption of risk, release, hold harmless and indemnity agreement were signed.

The firm stated it did not provide training as the worker had previous experience. The worker would tell the firm when he was available to work. The worker determined the methods by which assignments were performed. The firm was to be contacted for problem resolution if problems or complaints arose. There were no reports required. Services were performed at the firm's location. The firm required the work to personally perform services. The worker stated the firm provided orientation at the facility and trained on procedures, rules, and duties. The firm provided work assignments verbally. The firm determined the methods by which assignments were performed. The worker performed services on a regularly scheduled basis, i.e. 8:00 am to 7:00 pm, Monday through Thursday. In 2018, Friday's 8:00 am to 2:00 pm. The firm was responsible for hiring and paying substitutes or helpers.

The firm stated it provided the facility and dogs. The worker provided toys for the dogs to play with. The worker did not lease equipment, space, or a facility. The worker incurred the expense of toys and equipment. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker The worker could have incurred the economic loss or financial risk of the loss or damage of dog toys. The firm established the level of payment for the services provided.

The firm stated the work relationship could be terminated without penalty. The worker did perform similar services for others. There was a verbal agreement prohibiting competition between the parties when the worker started contacting the firm's clients. The worker requested business cards to help his training business. The firm represented the worker as a contractor to its customers. Services were performed under the firm's business name. The work relationship ended when the worker quit. The worker stated he did not perform similar services for others. The firm represented the worker as an employee to its customers.

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 he or she has 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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker is an independent contractor pursuant to a written 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation 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 customers served 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.

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. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.