

SS-8 Determination—Determination for Public Inspection

Occupation

Personal Service Providers

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 is seeking a determination of worker classification for services performed as a daycare helper from the firm from September 2020 until currently. The worker received a 1099-NEC from the firm for 2020. The worker feels that they were misclassified by the firm as an independent contractor because they were a college student doing a part-time job and did not harbor any special skills to indicate self-employment. There were no written agreements between the parties.

The firm states that it provides dog grooming, training, and daycare. The worker was requested to assist the firm with the dog daycare by walking and supervising dogs, grooming dogs, cleaning, and providing general customer services to its clients. The worker was classified by the firm as an independent contractor because their hours varied, the worker was minimally trained and supervised, the worker was allowed to solicit business from customers, and the worker would receive hourly pay plus tips.

The firm states that there was no specific training provided. However, tasks were to be completed by the worker when at work. The worker received job assignments from the firm and its customers. The worker and the firm determined the methods by which job assignments were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm and the customers for problem resolution. There were no reports required of the worker. The worker provided services from Monday through Friday, anytime between 7am and 6pm. The worker performed services at the firm's premises and customer locations. There were no meetings required of the worker. The firm required the worker to personally perform services. The worker states that they received initial training from the firm upon hire. The worker received job assignments verbally, and the firm owner determined how to perform job tasks. If the worker encountered any problems or complaints while working, they were required to contact the firm owner for problem resolution. The worker did not need to provide the firm with any reports. The worker performed services during 4-hour shifts Monday through Friday, alternating mornings and afternoons. The morning shifts would involve bathing animals and cleaning. The afternoon shifts involved daycare services and cleaning. The worker performed services on the firm's premises and did not need to attend any meetings. The worker personally performed services. Helpers and substitutes were not applicable.

The firm states that they provided cleaning supplies, nail clippers, and towels. The worker did not lease any space, facilities, or equipment. The worker did not incur any expenses on the job. The firm paid the worker an hourly wage with no access to a drawing account. Customers paid the firm for services provided. The worker would get full pay for any nail trims done for customers. The firm did not carry worker's compensation insurance on the worker. The worker faced no economic loss or financial risk. The firm established the level of payment for services provided. The worker states that the firm provided all supplies, materials, and equipment necessary. The worker did not lease or provide anything and did not incur any expenses. The worker was paid an hourly wage by the firm. Customers paid the firm. The worker did not have any exposure to financial risk. The firm established the level of payment for services provided.

The firm states that they did not offer the worker any benefits. The relationship between the parties could be terminated by either party without liability or penalty. The firm was unaware if the worker provided similar services to other firms. There were no non-compete agreements in place between the parties. The worker was not a member of a union. The firm was unaware if the worker advertised their services to the public. The firm represented the worker as a contractor. Business slowed and no work was available. The worker states that they did not perform similar services for other firms. The worker did not advertise their services to the public. The worker was represented by the firm as an employee. The worker was still employed by the firm at the time they submitted their request for a determination.

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, a statement that a worker is an independent contractor pursuant to a written or verbal 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 of dog grooming and daycare. 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, day, 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 firm provided all supplies, materials, and equipment needed for job duties. 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 the firm'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 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.