

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.4 Animal/Pest Handler	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the business of providing dog walking and pet care services. The worker was engaged to walk dogs and to provide pet care as well as house sitting services. She received a 2013 Form 1099-MISC. There was no written agreement between the two parties.

The firm provided the dog walker’s training manual. The worker indicated that there was also initial job shadowing with another worker as well. The worker received her work assignments from the firm; the firm agreed but indicated that the worker could accept or refuse a work assignment. The firm indicated that the clients would give the firm instructions which would be provided to the worker. The worker noted she contacted the firm if any problems arose; the firm noted that the clients would contact the worker directly or the firm. Both parties agreed that there were required reports such as emails, texts or calls to the clients; these reports were forwarded as well to the firm. Both agreed that the worker was not responsible for soliciting new business. All requests for services were submitted to and approved by the firm. The worker chose what areas she wanted to provide services in. The firm noted that the worker would have a number of dogs to visit for a pre-determined amount of time; the worker agreed that she would drive to clients’ homes to care for the animals for set amounts of time, sometimes 5-6 homes in a day. Both agreed that all the worker’s services were performed at clients’ homes. No required meetings other than the initial interview and individual check-in meetings. Both agreed that the worker was required to provide the services personally. Only the firm would hire or approve a substitute for the worker; each party indicated that the other would be responsible for paying that individual.

According to the worker, the firm provided leashes, food, toys, special treats/meals, notepaper and marketing materials. The firm indicated that it provided house keys and extra dog waste bags. The worker provided the car, gas, and phone. The clients also provided some supplies. The worker was reimbursed for duplicate house keys made; but not for the rest of her aforementioned expenses. The worker received 60% of what the client paid. Both parties mentioned that the worker had the potential risk of damage to her car and extensive phone data expenses. Both also agreed that the customer paid the firm, with the firm pointing out that on one occasion, the client paid the worker. Both agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others, though the firm did not know. The worker was represented as a dog walker under the firm’s business. The relationship ended when the worker did not perform her scheduled visits/walks as agreed upon.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

There are significant similarities between this case and Revenue Ruling 56-502, 1956-2 C.B. 688, modified by Rev. Ruling 80-365. In RR 80-365, individuals engaged to perform sitting services for the clients of a babysitting agency that receives a fixed percentage of the fee collected by the sitters are not employees of the agency with respect to remuneration received after 1974.

Therefore, the general rule for determining employee status set forth in Rev. Rul. 56-502 only applies to sitting services if the agency pays the sitters directly. Rev. Rul. 56-502 holds that individuals engaged by an agency that is not licensed or registered under state or municipal law as an employment agency to perform domestic service for its clients are employees of the agency for federal employment tax purposes. In that revenue ruling, the agency holds itself out as being engaged in the business of furnishing domestic help and determines the individuals' remuneration. The clients pay the agency for the individual's services, and the agency deducts a stipulated commission from the amount and turns the balance over to the individuals. This ruling sets forth a general rule to be applied in situations concerning the federal employment tax status of individuals engaged by a company to perform domestic services for its clients.

The individuals are considered to be employees of such agency for federal employment tax purposes where the facts show that:

- (1) the agency is engaged in the business of furnishing such services and so holds itself out to the general public,
- (2) the agency furnishes the employment of the individuals and fixes their remuneration,
- (3) the parents, homeowners, or others for whom the services are performed look to the agency for duly qualified and trained individuals,
- (4) the services are necessary to the conduct of the agency's business and promote or advance its business interests, and
- (5) the total business income of the agency is derived through a percentage of the remuneration received by the individuals for the performance of

In this instant case, the firm is engaged in providing pet walking/sitting services and holds itself out to the public to do so. It furnished the work and set the worker's remuneration. The clients/pet owners look to the firm to provide qualified and trained people. The worker's services were necessary and essential to the firm's continuing business operations. The total business income of the firm was derived through a percentage of the remuneration to the worker(s) for the performance of her and other similar workers' services. Therefore, based on the above ruling guidelines, the worker would be considered an employee.

In addition the following factors also existed and illustrated the right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker with instructions and her assigned duties after accepting a client/job. She performed her services according to the clients' needs which the firm agreed to based on the service packages it offered. The firm invoiced the client, and deducted its percentage before paying the worker. The worker was dependent on the firm for the client work assignments and provided her services to the firm on a continuous basis, not on just a one-time basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. There were no benefits and there was no written agreement. The worker was a dog walker/pet sitter for the firm's dog walking/pet sitting business. She was not engaged in an independent business venture when working for the firm but rather the services performed by the worker were part of the necessary and essential activities of the firm's continuing operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

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.