

## SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.8 Animal/Pest Handler

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm operates a dog grooming and boarding business. The firm engaged the worker through a resume, interview to perform dog grooming services for the firm's business. The firm provided the worker with business policy and procedures training and instructions. The firm assigned the worker services to perform via appointments and calendars based on the firm's business needs. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints the worker was not able to resolve for resolution. The firm required the worker to perform the services personally at the firm's place of business during the firm's hours of operation.

The firm provided the equipment, materials, and supplies and the worker provided personal hand tools of the trade. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm did not reimburse any expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm determined the level of payment for the services and products sold. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation.

There was a signed Independent Contractor Agreement indicating the worker job expectations, nondisclosure, non-compete, payment, and termination issues. It advised worker to tax responsibilities and required the worker to perform the services to the best of her ability and obey all the firm's rules and regulations in performance of the services. The worker did not perform similar services for others while performing services for the firm. The worker advertised her credentials on social media networks. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case the firm engaged the worker through an application process based on her credentials, interview, and resume to perform dog grooming services for the firm's dog grooming business. When a firm engages workers to perform services for the firm's business that are both necessary and integral to the firm's business operations then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. The firm assigned the worker services and schedules through appointments based on the firm's business needs and customers requests. The worker contacted the firm regarding resolution to any problems or complaints the worker was not able to resolve. The worker provided the firm with job details on services performed. The worker was required to perform the services personally at the firm's place of business according the firm's business policies and procedures, rules, and regulations. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal small tools of the trade. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk due to on-going significant business capital outlays being made. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss in a working relationship. The risk of loss or damages to equipment also does not represent control over profit and loss.

There was a signed Independent Contractor Agreement between the firm and the worker. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business but rather posted her credentials using media resources. The worker personally performed services for the firm's business at the firm's place of business on a regular continuous as needed variable scheduled basis under the firm's business name for several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.