

SS-8 Determination—Determination for Public Inspection

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| Occupation 05PHC.9 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 worker initiated the request for a determination of his work status as a dog walker in tax years 2013 and 2014 having received Form 1099-MISC to report his earnings. The firm's business is described as a pet care service.

The firm's response was signed by [REDACTED], owner. The firm's business is described as offering pet care services. The worker performed services as a dog walker.

According to the firm, the worker was not provided any training or instructions. The worker was offered job assignments that he could accept or reject. The clients set up their schedules directly via an online system. The worker determined the methods by which the assignments occurred and was responsible for the resolution of any problems. The worker's routine was set by the clients and subject to negotiation with the clients. The services were rendered at locations requested by client. The worker was not required to perform services personally; the worker could arrange for a substitute. The client would pay the substitutes; however if the worker paid the substitute it was subject to negotiation with the firm.

The worker responded that he was given specific training and instructions while assigned to another dog walker for two weeks and taught how to walk dogs and clean up after them. The job assignments came via text and the next day he picked up the clients' keys from the firm. He stated it was the firm that determined the methods by which the worker's services were performed and that any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered during the day after he picked up keys from the firm. The worker stated he was required to perform the services personally; and, any additional personnel were hired and paid by the firm.

The firm provided nothing; the worker provided anything not furnished by client which was a leash, collar, toys, food, and waste disposal bags. The firm responded that the worker did not lease equipment or a facility. The firm did not reimburse for anything; however, the client could if the worker needed to purchase any pet supplies. The worker was paid an hourly wage. The firm stated that the client paid the firm and worker. The firm acknowledged that it carried worker's compensation insurance on the worker. The firm responded that the worker established the level of payment for services rendered or products sold.

The worker indicated that the firm provided dog treats and waste bags. He stated that he furnished nothing; and, that he did not lease equipment and did not incur expenses in the performance of the job. The worker acknowledged that the firm paid him an hourly wage and that the customers paid the firm. He responded the firm established the level of payment for services provided or products sold.

Both parties concur that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm stated the worker was performing same or similar services for others during the same time frame and it was unknown to the firm if the worker advertised. The worker responded that he was not performing same or similar services for others during the same time frame and he did not advertise himself as being in business.

The worker provided print of firm's website that the firm is a fully bonded and insured pet care service and includes short biographies on the general manager and the walkers, including the worker. The firm believes that the clients' pets should be treated like one of their own, and they hold their staff to the highest standards. Services include dog walking, dog sitting, cat sitting, house sitting, puppy visits, and small animal care. The firm is available 365 days a year including evenings and holidays, and is flexible to accommodate cancellations and last minute walks/visits. The firm utilizes state-of-the-art technology to provide personalized online interface between firm and its clients. Their staff is professional and committed to providing excellent service.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties and have applied the above law to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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. 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.

CONCLUSION

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.