

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.10 Animal/Pest Handler

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is in the business of pet grooming. The worker provided her services to the firm in 2014 as a pet groomer with services which included bathing/clipping dogs, answering the shop phone, booking appointments, checking the firm's clients in and out, collecting receipts/cash, closing out the computer, submitting all paperwork to the shop owner, and received the Form 1099-MISC for these services.

The worker stated that the firm's owner trained the worker to do all the tasks the job required including following the firm's strict procedures and protocol. The firm stated that the worker was required to do quality work as per the shop standard. The worker maintains that she received her assignments from the firm's owner and the owner determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the owner who was responsible for problem resolution. The worker reported that the firm required her to write notes in the firm's clients' charts detailing the amount charged and the services provided. The worker had a set schedule beginning her day at approximately 7:15 AM to open the shop and completed her day at 4:30PM, or until the dogs was picked up. The firm contends that the worker's schedule varied and it was up to her to determine how many days she worked. She provided her services personally on the firm's premises 100% of the time. The worker indicated that the firm required her to attend unpaid staff meetings, and possible job termination for non-compliance. If additional help was required, the worker stated that the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; workspace, bath tubs, drying cages, fans, grooming tables, shampoo, towels, dryers, computer, phone, and business cards. The worker provided the standard grooming equipment. The worker did not lease any equipment, and the business expenses she incurred were for tool sharpening and repair, and the vet bill if a dog was injured. The worker received a commission for her services. The firm's customers paid the firm for the services the worker provided. Both parties agreed that the firm established the level of payment for the services the worker provided.

The worker did not perform similar services for others during the same time period. The worker provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the worker quit.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm trained the worker regarding the performance of her services. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered her services personally. 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. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Additionally, the fact that the worker has an investment in standard grooming equipment is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. Her pay was based on commission. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. 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. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.