

**SS-8 Determination—Determination for Public Inspection**

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| Occupation<br>05PHC.13 Animal/Pest Handler | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                                       | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

**Facts of Case**

The payer is in business as a mobile pet groomer. As the owner of the business you engaged the worker to provide grooming services. You reported the worker's remuneration on Forms 1099-MISC for 2013 and 2014.

The agreement between the parties states, among other things, that it is understood by the parties that the worker is an independent contractor, the business will pay the worker a "per pet completed" amount; the agreement is effective on a month-to-month basis, and will be automatically renewed; notice must be received two weeks prior to the end of the month in which the contract is terminated; any work product remains the exclusive property of the business; any social media contacts are the property of the business; and for a period of 6 months after the termination of the agreement, the worker will not engage in any business that competes with the payer's business within 10 miles of the business.

Information from the parties supports that you relied upon the worker's prior training and experience to perform his services. The worker's assignments and schedule were determined by your business's website bookings. The worker submitted sales tickets describing services performed for clients. He drove your business truck from appointment to appointment to groom your customers' pets. You stated that the worker was not required to perform his services personally. If additional personnel were needed, the worker was responsible for hiring and compensating them.

You provided the truck, fuel, and shampoo. The worker used his personal tools. He did not lease equipment. Other than tool expenses, he did not incur expenses in the performance of his services. You paid the worker on a piece work basis. You did not cover him under workers' compensation. Customers paid your business at prices you established. Neither party indicated an investment by the worker in your business or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation or loss of his tools.

You did not make benefits available to the worker. You stated that the worker provided similar services for others during the same time period. There is no evidence submitted that the worker advertised his services or maintained a business listing. You terminated the work relationship when your truck needed major repairs and the worker's services were not needed during the down time.

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**Analysis**

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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, your statement that the worker was an independent contractor pursuant to an 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while you relied upon the worker's prior training to perform his services, it is only reasonable to assume that you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction. The worker's schedule was dependent upon appointments scheduled from your website. He drove your truck and performed his services at your customers' locations. 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. You stated that the worker was not required to perform his services personally, but there is no indication that he could engage and pay others to perform services for you on his behalf. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker used his personal grooming tools. 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. You paid the worker at a set rate per job, and the risk of loss was absent. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He performed his services under your business name. The worker was not engaged in an independent enterprise, but rather the grooming services performed by the worker were a necessary and integral part of your mobile pet grooming business. 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. Although you did not provide benefits to the worker, you terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.