

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.16 Animal/Pest Handler

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is operating a veterinary clinic for animals who are homeless, sheltered, and rescued needing care and addressing the pet overpopulation issue. The firm offers discounted services and products for the services and pet products. The firm engaged the worker to perform limited veterinary assistant services for the clinic operations. The firm provided the worker with the necessary job instructions in order to perform the services. The firm assigned the worker services to perform and schedules to perform the services. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed.

The firm provided the equipment, materials, and supplies needed to perform the services. The worker provided personal items. The worker did not lease equipment or space. The worker incurred expenses for personal items. The firm did not reimburse any expenses. The firm paid the worker per diem basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's approval. The firm and worker indicated the worker did not advertise to the public as being engaged in a business. The firm referred to the worker as a representative of the firm's business to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. 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 not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided the place of business, equipment, materials, and supplies needed to perform the services. The worker provided personal items. The firm paid the worker on a per diem basis and the customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss due to significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's approval. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The firm referred to the worker as a representative of the firm's business to the customers. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous basis over several years under the firm's business name.

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.