

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.19 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 firm is operating a dog grooming business. The firm engaged the worker through an application process to perform dog grooming services for the firm's business. The worker was experienced so no formal training was needed or provided by the firm. The firm provided the worker with grooming instructions based on the firm's experience but allowed the worker to use her own style to perform the services per the firm. The firm assigned the worker services to perform and schedules to work per the worker. The firm indicated the business operated as a team and expected workers to divide up the labor and other services needed to be performed at the firm's place of business. The firm was required to be contacted regarding any problems or complaints the worker was not able to resolve for resolution. The daily routines varied and were flexible based on the firm's business needs. The worker was required 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 equipment, materials, and supplies and the worker provided personal items used to perform the services. The worker did not lease equipment or space. The worker did not incur any on-going significant business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services paid by the customers and per the firm with worker input. The worker's economic loss and financial risks were related to loss or damage to personal items they use to perform the services.

There were no contracts between the firm and the worker. The worker did not perform similar services for others. The worker did no advertising as a business to the public. 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. In this case the firm engaged the worker who was experienced to perform dog grooming services for the firm's dog grooming business on a variable flexible scheduled basis. The firm provided no formal training due to the worker's experience. The firm determined how the assignments would be distributed between the workers and assigned jobs to the workers to perform based on the firm's business needs. The firm and the worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints the worker was not able to resolve for final resolution. The worker was required to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed. 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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no significant financial investment in a business and did not incur any on-going 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 equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal tools of the trade. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services paid by the customers and hourly wage payment to the worker for performance of the services. The worker could not suffer any economic loss due to on-going 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 operation of the business. These facts evidence financial control by the firm over the services performed by the worker. The risk of losses or damages to equipment or materials would not be considered having control over profit and loss in the day to day operation of a business.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise to the public as being engaged in a business operation. The worker personally performed services for the firm's business on a regular and continuous flexible scheduled basis under the firm's business name at the firm's place of business for about 1 year. The services performed by the worker were a necessary and integral part of the firm's 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 business.

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.