

# SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.21 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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a dog grooming business that provides baths, haircuts, etc. and provides kenneling and boarding services both long-term and by the day. The worker was engaged as a helper on an as needed basis in the firm's grooming shop. The firm states the worker was mainly hired for kennel work and taking care of dogs. The worker's duties included taking the dogs out to the play area and bringing them back, checking customers in and out, keeping kennels clean, and feeding and watering the animals. The firm believes the worker was an independent contractor (IC) because the worker was given latitude to perform her duties in the kennels, she performed her services on an as needed basis, she was not eligible for benefits, and she had no fixed hours in which to work.

The firm instructed the worker on how to perform her duties. The worker received verbal assignments from the firm or the assignments were given to her via hand-written notes. The firm determined how the worker completed her assignments. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit reports and the firm states the worker attended meetings as needed. The worker performed her services at the firm's premises.

The firm provided all equipment, supplies, and materials to the worker in order to perform her services. The worker did not incur expenses, she was paid at an hourly rate, and the clients paid the firm for services rendered by the worker. The worker did not establish the level of payment for the services provided.

The firm states the worker was eligible for personal days. The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm provided the worker with her assignments and they provided instructions to the worker on how to perform her services. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on an as needed basis and therefore, an independent contractor is without merit. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship exists where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

While the firm provided the worker with freedom of action as to when she performed her services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

Factors that illustrate whether there is 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 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.