

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

Occupation

05PHC.22 Animal/Pest Handler

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a cat and dog grooming business. The worker is retained by the firm as a pet groomer. She has performed services for the firm since 2012 and is still performing services for the firm. Both parties have provided a copy of the contract agreement that was originally signed in 2012. The firm has reported the income on Form 1099-MISC each tax year. The firm stated the groomers must have two to three years of experience before she hires them. Work assignments are determined by the clients of the firm. The firm stated a daily work sheet is posted. The firm handles all complaints and resolutions. The worker is required to complete a card on all animals groomed. The firm stated they open at eight-fifteen. The firm stated the contractor as an independent contract has the option of coming in then, or later, they can also leave when they want. Services are performed on firm premises; schedule varies, dependent on demand. The firm indicated staff meetings are held twice a year. Services are to be performed personally. The firm states it provides the work space, tubs, cages, shampoo, and equipment for drying, paper towels, and regular towels. The worker provides her own equipment to groom dogs. The firm indicated nothing was leased. The worker is paid on a fifty percent commission basis. The customer paid the firm, (if they paid the worker all is turned over to the firm.) The firm determines the rates charged for services, although the worker could add additional fees for teeth brushing, matting etc. The firm indicated Christmas bonuses are also given. Either party could terminate the work relationship without incurring a penalty or liability. The worker did not perform similar services for others. Approval of the firm would have been required to do so. The work is performed under the firm's business name – as a contract groomer.

The worker stated appointments start at eight a.m., groomers are expected to be there by eight every day, they groom until four p.m. The firm schedules all appointments and distributes between groomers. The worker agrees services are performed on firm premises, utilizing the firm's equipment and supplies. She provides her own grooming tools. She agreed she is paid on a commission basis, and the customer pays the firm. All services are performed under the firm's business name. The worker indicated the firm determines the rates charged for services.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

**ANALYSIS**

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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## Analysis

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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. The worker has performed services continuously since 2012. All work is performed on the firm premises, utilizing the firm's equipment and materials. Services are performed as scheduled by the firm, and performed under the firm's business name. The firm establishes the rates charged to the client, and the client pays the firm for the services performed. Although there is an independent contract agreement, the firm is not operating in that manner.