

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.23 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 grooming shop that washes, clips, and provides haircuts for pet owners. The worker was engaged as a bather. The worker's earnings would bathe clients' dogs in shampoo that they (the firm) provided, she would dry and brush out dogs with her own brushes and combs, and she would pull ear hair and cut nails. The firm states these are normal skills of a bather. The firm believes the worker was an independent contractor because her services were brought in on an as needed basis, she brought her own equipment such as brushes, combs, etc. and she used their larger equipment such as the tub and drier as it was easier to do so. The firm states the worker was able to come and go as she pleased. The firm did not withhold employment taxes from the worker's earnings.

The firm states the worker was aware of their hours of operation and she was aware of the function of a grooming shop with her six (6) years of experience at her former employers.

The firm states they provided no training and instructions to the worker as she had previous education and years of experience. If the worker came into the firm's facility, her assignments were dictated by the client bookings and pick up times listed on the board in the firm's shop. The clients' pets were numbered by priority and this determined how the worker performed her services. The worker was required to personally perform her services at the firm's premises; approximately 30 minutes per dog. 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 or attend meetings. If the worker came into the firm's facility, the worker's routine was to assess the client list and she would assume the priority of the pickup times; she would then start her routine of brushing and preparing for baths.

The firm provided the shampoo, grooming tables, dryers, and bath tubs to the worker in order to perform her services. The firm states the worker provided brushes, combs, scissors, and nail trimmers. The worker did not incur expenses. The clients paid the firm and the firm paid the worker at a daily rate. The firm did not carry workers' compensation insurance on the worker. The worker did not have an opportunity to incur a loss as a result of her services.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others and she was not required to seek their approval to do so. The worker did not advertise her services and either party could terminate the work relationship at any time without either party incurring a liability.

The firm provided information that the worker owned her own pet sitting business.

Analysis

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 worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. 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 as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist 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.

The firm provided information that the worker owned her own pet sitting service. Investigation into this business indicates it was established after the work relationship was terminated between the firm and the worker. In addition, the services provided by the worker's business is not the same as the services provided by the firm. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting oneself and be an employee of one or all of whom engages her.

While the worker provided some of her own hand tools, this is not considered a significant investment. 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.

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, both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement or the filing of a Form W-9), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

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, co-adventurer, agent, or independent contractor must be disregarded. 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.

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.