

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.24 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 worker submitted a request for a determination of worker status in regard to services performed for the firm from October 2014 to February 2016 as a pet groomer. The work done by the worker included grooming dogs that were assigned to her. The firm issued the worker Form 1099-MISC for 2014 and 2015; the 2016 tax reporting document is not yet due to be issued. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The firm's response stated it is a dog grooming business. The worker was engaged as a dog groomer. The worker was an independent contractor as she was only paid commission on the dogs she groomed and she told the firm how many she wanted to groom each day.

The firm stated it provided the worker specific instruction related to the customers' requests for the dog grooming assignments. The customers determined the methods by which assignments were performed. The firm was contacted if problems or complaints arose. The worker was responsible for resolution. The firm required the worker to report on the dogs groomed that day. Meetings were not required. The worker had no set routine or schedule. On a day-to-day basis the worker went to the firm's premises to groom the number of dogs she had chosen. The firm required the worker to personally perform services. Substitutes were not used as the firm approved other groomers to perform services if the worker was unable to do so. The worker stated the firm determined the methods by which assignments were performed and assumed responsibility for problem resolution. The worker's routine consisted of Tuesday through Saturday, 9 am to 4:30 pm.

The firm stated it provided the work station and grooming table. The worker provided grooming equipment. The worker did not lease equipment, space, or a facility. The firm and worker split the cost of bathing expenses in exchange for a higher commission. Customers paid the firm. The firm paid the worker commission; there was no minimum amount of pay guaranteed. There was no drawing account allowed for advances. The firm did not carry workers' compensation insurance on the worker. The worker incurred the economic loss or financial risk associated with vet bills if injuring a dog. The firm established the level of payment for the services provided based on all other groomers in the area. The worker stated the firm also provided bathtubs, crates, all consumables such as shampoo, cologne, etc., and client cards. The worker did not incur economic loss or financial risk other than normal wear and tear on her grooming tools.

The work relationship could be terminated by either party without incurring liability or penalty. The firm stated it is unknown if the worker performed similar services for others or advertised. There was no agreement prohibiting competition between the parties. The firm represented the worker as a contractor to its customers. The work relationship ended as the worker was not performing customer services as requested; caused injuries to dogs; groomed dogs in the firm's premises after business hours without the firm's permission. The worker stated she did not perform similar services for others or advertise. The firm checked and approved the final groom and returned the dog to the customer. The firm represented her as an employee to its customers. Services were performed under the firm's business name. The worker was fired.

Analysis

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.

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, coadventurer, agent, or independent contractor must be disregarded.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the dog grooming services performed by the worker were integral to the firm's business operation. The firm provided work assignments, required the worker to report on daily services performed, and ultimately assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "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. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. In this case, the worker did not invest capital or assume business risks. 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. Based on the commission rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.