

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.25 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 initiated the request for a determination of his work status as an animal caregiver and customer service representative in tax years 2014 through the present. The firm's business is described as a pet store which provides pet grooming in addition to selling pets and pet supplies. The worker indicated the work relationship started in 2004; there are no significant changes in the job. He indicated that that he has not received a W-2 for January to August 2015 to report taxes withheld during that time. Beginning August 24, 2015 to the end of the 2015 tax year the firm did not withhold. The firm has not withheld for taxes in 2016.

The firm did not respond to the request for information; the firm's Letter 5367 was not returned as 'undeliverable'.

The worker was given specific training and instructions by the manager and other employees as to duties and job assignments. He is given a daily and weekly checklist of assignments to be completed. In this position he feeds and waters animals, cleans the animal housing, makes sales, and handles the cash register. The firm determines the methods by which the worker's services are performed. Any problems or complaints encountered by the worker are directed to the firm for resolution. The services are rendered at the firm's location and vary between the hours of 9 am to 7 pm. The worker is required to perform the services personally.

The firm provides everything that is needed. The worker furnishes nothing; he does not lease equipment and does not incur expenses in the performance of the job. The firm pays the worker an hourly wage; the customers pay the firm. The worker stated that he is not at risk for a financial loss in this work relationship. The firm establishes the level of payment for services provided or products sold.

There are no benefits extended to the worker other than an employee discount on most store products. Either party can terminate the work relationship without incurring a liability or penalty. The worker is not performing same or similar services for others.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

We have considered the information provided and have applied the above law to this work relationship. In this case, the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker is not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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. In this case, the worker is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.