

## SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.28 Animal/Pest Handler

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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 in the business of training dogs in obedience and protection work and the worker was engaged in 2014 and 2015 as a trainer. The firm states the worker's title was "contractor". The firm believes the worker was an independent contractor because she didn't keep set hours, she worked for other companies performing the same work, and she had her own business training dogs.

The firm states that as they had overload work, the worker would come in and get a list of dogs to be trained. The firm states the worker determined how she trained the dogs and the worker could contact the owner of the firm if she had any problems while training the dogs. The worker was not required to submit reports or attend meetings. The firm states the worker was required to personally perform her services and her services were performed at their premises, at her home, and at third party locations where clients were. The worker's schedule varied depending on the amount of work the firm had; the firm states the worker could come in and provide the services then leave. The firm states they were responsible for the hiring and paying of substitutes or helpers.

The firm states they provided training collars to the worker in order to perform her services and the worker provided her own leashes. The worker did not incur expenses, she was paid at an hourly rate, and the clients paid the firm and the worker for services rendered by the worker. The firm states if the worker collected funds from the client, she would pay a portion over to them. The firm states the worker established the level of payment for the services provided. The firm reported the worker's earnings on Forms 1099-MISC. The worker did not have an opportunity to incur a loss as a result of her services.

The firm states the worker was eligible for bonuses. The firm states the worker performed similar services for others and she was not required to seek their approval in order to do so. The worker did not advertise her services and the firm states the worker was represented as a representative of their business. Either party could terminate the work relationship at any time without either party incurring a liability. The firm states the relationship ended with the worker when the job was completed and they hired on enough full time workers to cover overages.

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## Analysis

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As is the case and 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.

Although the worker provided her services on an as-needed basis, this in and of itself does not determine the worker's status as an independent contractor as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. 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. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or 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, there was no evidence presented or found in this investigation that indicates the worker had an investment in a business related to the services she performed for the firm offering those services to the general public. While the worker may have performed similar services for others, 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. 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.