

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.32 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 firm provides mobile pet grooming services. The worker was engaged by the firm as a groomer. The firm reported the worker's remuneration on Forms 1099-MISC for 2012 through 2016.

The firm provided the initial and subsequent contracts between the parties. Both state, among other things, that the contract will continue in effect until such time as it is terminated by either party; the worker is and will remain an independent contractor, and has no claim to benefits of any kind; the worker is responsible for the payment of all income and self-employment taxes; the worker agrees to perform the stated grooming services, including traveling to the customers' houses in the self-contained van, provided by the firm; the firm pays the worker the stated commission on a weekly basis; the worker will be obliged to expend money for travel, equipment maintenance, and other necessities required to perform her services; all expenses for maintenance and vehicle repair will be paid by the firm, but does not include repairs needed due to the negligence of the worker; if the worker expends money for repairs or maintenance, the firm will reimburse her upon receipt of receipts for the expenditures; and it is the worker's responsibility to alert the firm of any maintenance or repairs needed. The subsequent contract adds: the parties agree that any injury incurred by the worker while acting as an independent contractor is the sole responsibility of the worker; and the firm will not be liable in any way for any injury while the worker is acting as an independent contractor for the firm. The subsequent contract changes the time that the worker is prohibited from soliciting the firm's clients to 12 months and states that the worker agrees and promises not to engage in unfair competition with the firm.

The firm's website states the specific grooming services it provides; the service areas and limited services areas; grooming hours and office hours; and that the firm prides itself on customer satisfaction and provides only the very best care. Posted testimonials refer to the groomers at K-9 Kruiser. It makes available client applications and on-line requests for dates and times for appointments. The firm offers multiple pet discounts and states that price quotes by the office are based on the size and breed of the pet; final pricing is determined by the groomer based on the pet's true size, hair type and condition, and the type of grooming requested. Additional charges may also apply for pets that are difficult to groom, have extra-long hair, or are excessively matted. The groomer will inform the client of any price changes prior to the pet being groomed.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. The firm provided the worker with a list of possible contracted jobs. It allowed the worker flexibility in her hours and certain restrictions regarding breeds, locations, and clients. If problems or complaints occurred, the worker contacted the firm; the worker was responsible for their resolution. The worker reported the cost of jobs and time spent performing them to the firm. The firm stated that the worker was not required to perform her services personally, and that if additional personnel or substitutes were needed, the worker was responsible for hiring and compensating them.

The worker provided her personal grooming equipment and supplies. She incurred fuel and cell phone expenses. She did not lease the van. Neither party indicated an investment by the worker in the firm or a related business.

The firm did not make benefits available to the worker. The firm did not prohibit the firm from providing similar services for others during the same time period. The worker did not advertise her services or maintain a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

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. Therefore, the firm's 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform her services, it must have retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure its clients' satisfaction with the work. The firm provided the worker with the work assignments and the locations at which to travel. 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. The worker was required to submit reports of time expended and final costs of groomings. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. Although the firm stated that the worker was required to perform her services personally, there is no evidence submitted showing the worker engaged and paid others to perform services for the firm on her behalf. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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 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. Paying for fuel for the vehicle only reduced the worker's earnings; it did not put her in the posture of ever incurring a loss. The firm paid the worker on a commission basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She performed her services under the firm's name, allowing the firm to fulfill its contracted services with its clients. The worker was not engaged in an independent enterprise, but rather the grooming services performed by the worker were a necessary and integral part of the firm's mobile grooming business. 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. The firm did not prohibit the worker from performing similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.