

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.33 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 her work status as a dog groomer in tax years 2014 and 2015. In addition to submitting an application, she was required to groom a dog and was observed by the firm's manager, who was also a groomer and the daughter of the firm's owners. The firm's business is described as dog grooming.

The firm's response was signed by [REDACTED], sole proprietor; however, the pay documents were issued under her husband's SSN. The firm's business is described as providing work space for small dog groomers. The worker performed services as a dog groomer.

According to the firm, there was no training or instructions given other than to keep the premises clean after they use it. The groomers received calls on their cell phones or the business phone and set their own appointments. The worker determined the methods by which the services were performed and was responsible for working out any problems or complaints with the customers. The worker was required to report the number of dogs groomed and the amounts charged. The firm stated the groomer comes in if they have appointments at the shop or sometimes at the customer locations. The worker was not required to perform the services personally; the worker hired any substitutes or helpers and the firm's approval was not required and the worker was not reimbursed.

The worker stated that she was given specific training and instructions to answer the phone, schedule appointments, to have the dogs done in an hour, the size of the dog as well as a specific breed that would not be groomed, and how to fill out the daily and weekly work sheets. All calls for grooming went through firm's phone until the firm discontinued the long distance telephone plan and the worker(s) had to call customers on their cell phones. The job assignments were conveyed verbally or through email. The worker responded the firm determined the methods by which the worker's services were performed; and, noted that any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered Tuesday through Friday from 8 a.m. to 5 p.m.. The worker was required to perform the services personally with any additional personnel hired and paid by the firm through the manager. The worker indicated that the firm deducted \$3.00 per dog from the groomer's pay and the firm issued the Form 1099-MISC to the 'bathers'.

Both parties acknowledged that the firm provided the workspace, grooming tables, bathtubs, dryers, drimmels, shampoos, cages, cleaning supplies, building, and phone. The worker furnished clippers, blades, shears, and nail trimmers. The worker indicated that she did not lease equipment, space or facilities and did not incur expenses in the performance of the job other than for her tools of the trade; the firm responded that the worker leased space by virtue of splitting the fees charged to the customer. The worker stated that customers' payments for the services were paid either in cash or a check made payable to the firm (there were no credit card transactions) and the firm paid her a commission. The manager would get paid an extra \$35 a week for being the manager; the worker stated that she was 'the manager' for awhile and added that the manager and groomers had keys to the facility. The firm indicated the fees paid were split and the worker retained the tips. The worker responded that she was not at risk for a financial loss in this work relationship and that she did not establish the level of payment for services provided or products sold.

The firm and worker concurred that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker stated that services were rendered under firm's business name. There was no written agreement between the firm and worker. The firm responded that the work relationship ceased when the worker left to open her own business and took many customers with her.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained 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 and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 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.

CONCLUSION

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.