

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.34 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 a dog groomer in tax years 2013 through 2016. The firm's business is described as dog grooming services.

The firm's response was signed by the firm's owner. The business is described as a full service pet grooming shop; bathe and trim pets. The worker performed services as a dog groomer.

The worker was hired as an entry-level employee and groomer-in-training in October 2013 and he completed his training in August 2014. The training included checking-in and -out clients, answering the phone and making appointments, general cleaning, bathing dogs and learning to groom dogs. The worker was issued Form W-2 to report his earnings. The firm acknowledged that as of August 2014 he began his work as a '1099-MISC subcontractor' grooming pets; however, when he finished his grooms for the day he worked from 3-5 pm cleaning, answering phones, setting appointments, checking clients out, and performing 'end of day' closing tasks for which he was paid as an employee and issued Form W-2.

The groomers are given the hours of the shop and the time frame in which dogs are to be completed (generally 2 1/2 hours). The worker decided the days of the week he wanted to work and how many dogs he would like to complete each day. The worker determined the methods to be used and handled any issues with clients; however, the firm was notified of the issues and the resolutions provided since it was her business. The worker was responsible for turning in a 'groom ticket' for each completed dog at the end of the day. The services were rendered on the firm's premises; however, the worker was not required to perform the services personally.

The firm provided the facility, groom table, groom cart for equipment, bather, and products to wash the dogs, in addition to utilities and advertising. The worker furnished his tools of the trade, such as clippers and blades, scissors and brushes, ear cleaning supplies, nail trimmers, sharpening and maintenance costs. The firm paid the worker a commission for grooming; the clients paid the firm for all services. The base groom price is set by the firm; the worker could adjust the prices, if the work was less than he thought it would be or the behavior or condition of the dog required extra time. The worker was covered under the firm's workers' compensation insurance policy. The worker's financial loss in this work relationship would be the result of an equipment malfunction, injury, or rabies.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work 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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 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.