

# SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.36 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 is a do-it-yourself pet wash, and full service grooming salon. The worker was engaged to perform services as a Master Pet Stylist/Groomer. The worker's duties included bathing, drying, and haircuts for all breeds of cats and dogs. The firm indicated that the services were performed in the capacity of an independent contractor, under an independent contractor agreement. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker and the firm set the client appointments. The worker had a key to the firm's facilities and could set appointments Monday through Saturday, in accordance to client needs. Clients determined what services were needed, and the worker determined the work methods by which to perform her services. Problems with the grooming services were resolved by both the firm and worker. The worker was required to perform her services personally, at the firm's location.

The firm provided the facilities, tables, kennels, tubs, dryers, shampoo, ear cleaner, and toothpaste needed to perform the services. The worker provided her own grooming tools (clippers, blades, scissors), as well as protective wear, and special footwear. The worker incurred expenses for maintenance of her tools. The firm indicated that the worker paid a fixed percentage for the use of shampoo, conditioner, shop utilities, that were added to the rent. No information was provided for this case to support that the worker leased or rented the facilities or equipment or supplies used to perform her services. The firm paid the worker on a commission basis as payment for her services. Customers paid the worker for services rendered, and the worker remitted the total of all sales to the firm. There was no information provided to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

The firm carried workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The parties agree that the worker performed similar services for others while engaged by the firm. There was no information provided to support that the worker was not allowed to do so. There was no information provided to support that the worker advertised as being in business to perform similar services. The work relationship was continuous as opposed to a one time transaction, and ended when the worker terminated her services.

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**Analysis**

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The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)