

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Pet Handlers/Caregivers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

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 a dog grooming business and the worker was engaged from 2016 to April 2018 as a dog groomer. The firm believes the worker was an independent contractor while performing services for them as she was paid a commission for her services, she used her own equipment, she had no set hours, and she had her own insurance. The firm reported the worker's earnings on Forms 1099-MISC.

The firm states they did not provide training or instructions to the worker and they provided no assignments to her. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was required to personally perform her services at the firm's premises. The firm states the worker's routine was to come in if she had pets to groom and she went home when she was done. The firm states the worker was not required to submit reports or attend meetings. The firm states the hiring and paying of substitutes or helpers did not apply in this case.

The firm provided the shop and grooming table to the worker in order to perform her services. The worker did not lease a space from the firm. The worker provided her own shears and tools. The clients paid the firm for services rendered by the worker and the firm compensated the worker on a commission basis. The firm states the worker did not have an opportunity to incur a loss as a result of her services. The firm states the worker was covered under their workers' compensation insurance but that she also had her own. The firm states they set the fee for grooming, nail clipping, and teeth cleaning services charged to their clients.

The worker was not eligible for employee benefits. It is unknown to the firm if the worker performed similar services for others or if she advertised her services. The firm states they represented the worker as a contractor to their clients. The worker terminated the work relationship.

Analysis

As in this 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 set the prices charged their clients and they collected the fees for services from those clients. 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.

While the firm provided the worker with freedom of action as to when she performed her services, this in and of itself does not determine the worker's status as an independent contractor. 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.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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. While the worker was compensated on a commission basis, she did not lease a space requiring a monthly expense that was due whether she earned money or not. Therefore, she did not have an opportunity to incur a loss as a result of her services. The worker provided her own grooming supplies however, this is not considered a significant investment. 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.

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, 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. 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.