

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC Pet Handlers/Caregivers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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**

The worker submitted a request for a determination of worker status in regard to services performed for the firm from August 2018 to April 2019 as a dog groomer. The firm issued the worker Form 1099-MISC for 2018 and 2019. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error. A copy of an internship agreement and a list of factors that the employee believes demonstrates the misclassification were provided to us for our review.

The firm's response states it is a dog grooming facility. The work provided by the worker was that of a groomer. The worker was requested to perform dog grooming services for the firm's customers. The firm states that they did not provide direction or instruction. The firm believes that the worker was an independent contractor because they provided their own tools and set their own hours and prices.

The firm states that they did not provide any training or instruction to the worker. The firm states that the worker received work assignments through customer calls and appointments that are booked. The customer would explain to the worker how they wanted the job assignments performed. The firm states that the worker was responsible for problem resolution and was not required to furnish the firm with any reports. The firm states that the worker made their own hours. All of the worker's job duties were performed at the firm's location. The firm states that there were no meetings required of the worker. The worker was required to perform all services personally. The firm states that if substitutes or helpers were required, the worker was responsible for paying them. The worker states that they were trained without pay under another groomer as an intern for over 200 hours. The worker provided a copy of an internship agreement between the worker and the firm to back up evidence of the training agreement. The worker states that work assignments were received when the firm's receptionist would book appointments for the worker's day. The worker states that the firm would determine the methods by which job assignments were performed and was responsible for problem resolution. The worker was required to fill out an index card reporting the grooming services that they rendered to each client's pet for the firm to charge the client. The worker states that their routine involved going into the firm's location in the morning and working until all the booked appointments were finished for the day. The worker states that there were occasional staff meetings that would be held, but no penalties would occur if the staff members did not attend. The worker was required to perform all services personally. If helpers or substitutes were required, the firm was responsible for hiring and paying them.

The firm states that they provided the worker with a tub and shampoo, and the worker had to provide tools, a table, a dryer, and cologne spray. The worker did not have to lease space, facilities, or equipment to perform job duties. The firm states that the worker was responsible for buying and sharpening their own tools and providing finishing cologne sprays for the dogs they would groom. The worker was paid by commission and did not have access to a drawing account for advances. The firm states that they did not carry worker's compensation insurance on the worker. The worker would be responsible for damage to any of their tools that they used to perform dog grooming services and would be liable for any vet bills if they accidentally cut an animal during the grooming process. The firm states that the worker set the level of payment for services rendered, and the customer would pay the firm. The worker states that the firm provided all tables, tubs, kennels, play pens, vacuums, dryers, and shampoos and conditioners for the grooming services rendered by the worker. The worker provided their own personal set of grooming clippers, finishing sprays, blades, scissors and brushes. The worker states that they were not exposed to economic risk or financial loss during the provision of services for the firm. The worker states that the firm set the level of payment for all services rendered by the worker.

The firm states that they did not offer any benefits to the worker. The work relationship between the firm and the worker could be terminated at any time without incurring loss or liability. The firm states that the worker performed similar services to other firms at the time they performed services for the firm and did not need approval from the firm to do so. The firm states that the worker provided grooming services at their home in addition to working for the firm. The firm states that the worker is not a member of a union and advertised their services to the public on social media and

The firm states that the worker was represented as a contractor working for the firm. The firm states that the work relationship ended when the worker quit. The worker states that the firm offered the worker personal days as a benefit. The worker provided a copy of an "Employee Time-Off Request Form" that they were required to fill out if they wanted to request a day off from work, and the bottom portion of the request form states that the request is subject to approval by their employer. The worker states that they did not perform similar services to any other firms at the time of their work relationship with the firm. The worker also states that there was a non-compete clause in the internship agreement between the firm and the worker. The internship agreement that the worker furnished us with clearly outlines that the worker was not allowed to perform services for any company outside of the firm. The agreement also outlines various protocols and policies of the firm, and states that while the worker was performing as an intern under the agreement, they were to be considered an employee or agent of the company while on the firm's premises.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. The internship agreement provided also demonstrates that the firm had provided training and instruction to the worker, who also was required to follow the firm's protocols and policies. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the commission pay arrangement the worker could not realize a profit or incur a loss beyond the loss of salary or the profit of how many clients for which the firm assigned the worker to perform services.

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. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.