

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.30 Animal/Pest Handler

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a mobile dog grooming business. They go to customer homes and bath, cut and trim fur. The worker performed services as a dog groomer for tax years 2014-2015. The firm indicated she was doing the groom portion after the bath. This included shaving the dog and specialty cuts. The firm stated the worker was instructed they would use her as an independent contractor and would be issued a 1099. She was paid at the end of each day for each job she worked. At the end of each day, she was shown the jobs for the next day and she decided which ones she would work. The firm had no control how she did her job. The firm indicated she had no set hours; it all depended on what jobs she decided to take. The firm provided the mobile trailer with table and wash tub. She provided her own grooming tools. The firm indicated the customer paid the firm. If they paid the worker, she would turn the money into the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as their groomer, contracted to do the correct specialty cuts for each dog. The worker no longer works for the firm.

The worker stated she would meet the owner at a shopping center and ride with her to the grooming appointments. She had no control over her work schedule. She required no training. She was instructed where and when to work and what kind of grooming to perform. The clients would request a style to the firm, the firm relays the instructions to the worker. She was required to perform her services personally. The worker had no control over hiring. The firm provided the grooming trailer, shampoos, combs, blades, and equipment maintenance. The worker indicated she provided her own clippers. She indicated she was paid fifty percent of the daily income. The customer paid the firm, or if they paid the worker, the money was turned into the firm. The firm established all prices and quotes. Either could terminate the work relationship without incurring a penalty or liability. She was referred to as the firm's groomer. She indicated she quit.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

ANALYSIS

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.

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.

Analysis

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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.

We have applied the above law to the information submitted. As is the case 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. In the instant case, all work was performed under the firm's business name. All clients contacted the firm for service and paid the firm, the prices determined by the firm. The worker did not have a major financial investment in equipment, in this instance, as it was a mobile grooming business. The worker provided her own grooming tools only, which would be deemed tools of the trade. The worker indicated she met the firm at a central location, then rode with her throughout the day to various clients, as scheduled, indicating she was in fact, not in control of the daily work schedule.