

SS-8 Determination—Determination for Public Inspection

Occupation

Overseers/Persons in Charge (any industry)

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**

Information provide indicated the firm is a pet grooming and daycare facility. The worker had been retained by the firm in 2017 and 2018 as an office worker and groomer for the firm. The firm issued both a W-2 Form and 1099-MISC form at year end, they stated because the worker had first requested the 1099-MISC, then requested to be switched to an employee. The firm provided a copy of the independent contract agreement and employee waiver for worker's compensation insurance coverage. The firm had indicated the worker had been provided with office training. The firm determined how the work was performed and gave work assignments. The worker was required to give written reports on a monthly basis. All work was performed on the firm premises. The worker was to provide his services personally. The firm indicated it provided the facility. The worker provided nothing and did not lease equipment, space or the facility. The worker was paid on salary as well as fifty % commission. The customer paid the firm. the firm indicated they did carry workers' compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker quit.

The worker agreed they received both pay documents as they were switched to employee status halfway through the year. He indicated he performed services as an office manager. He did not indicate he did grooming services. He agreed work was performed on the firm premises. Meetings were mandatory when held. The firm provided all equipment and supplies. He indicated he was paid both on salary and by the hour. He agreed the customer paid the firm. He indicated he was represented as an employee. He agreed he quit.

Analysis

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.

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. The work was performed on firm premises under the firm's business name. The firm indicated the worker was paid a percentage of each grooming service, and the customer paid the firm for services. That indicates an employer/employee work relationship and not that the worker was running his own grooming business.