Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05PHC Pet Handlers/Caregivers	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 July 2016 to March 2019 as a dog groomer. The firm issued the worker Form 1099-MISC for 2016 through 2018. A copy of the 2019 tax reporting document was not provided for our review. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The firm's response states the worker performed pet grooming services inside the firm's facility. The worker was classified as an independent contractor as she chose the days and hours she would work; decided which pets she would groom and how she would provide those services; set the fees for services; provided and maintained her own equipment; provided service to her past customers at the firm's facility for which the firm was not compensated; hired and paid her own helpers. The signed contract states she is an independent contractor.

The firm stated it did not provide specific training or instruction to the worker. The firm scheduled appointments for the worker based on parameters she set. The worker determined the methods by which assignments were performed. If problems or complaints arose, the firm was notified. Both parties worked jointly for a resolution. Reports and meetings were not required. The worker's routine consisted of arriving based on the schedule she set, taking breaks when she decided, and leaving whenever her work was done. Services were performed at the firm's premises. The firm required the worker to personally perform services. The worker was responsible for hiring and paying substitutes or helpers. The worker stated the firm provided her specific instruction related to working on sedated animals as overseen by the vet and vet technicians. The firm scheduled appointments based on pet owner directions. The firm's owner or office manager were contacted and assumed responsibility for problem resolution. Reports, notes, and prices were all documented through the firm's computer. She performed services on a regularly scheduled part-time basis. If substitutes or helpers were needed, the firm's approval was required to hire them. The firm paid substitutes or helpers.

The firm stated it provided shampoo, towels, cages, and a room for the worker to work in. The worker provided and incurred the unreimbursed expense associated with clippers, scissors, combs, brushes, bows, and ribbons. The worker did not lease equipment, space, or a facility. Customers usually paid the firm. The firm paid the worker commission; a drawing account for advances was not allowed. The worker's previous customers paid the worker with no compensation to the firm. The firm did not carry workers' compensation insurance on the worker. The worker's economic loss or financial risk related to loss or damage to her equipment, in addition to loss of income if she opted to work less. The worker stated the firm did not guarantee her a minimum amount of pay.

The firm stated the work relationship could be terminated by either party without incurring liability or penalty. It is unknown if the worker performed similar services for others. There was an agreement prohibiting competition between the parties within a five mile radius. The worker did not advertise. The firm represented the worker as a groomer, working in cooperation with the firm, to its customers. The worker terminated the work relationship due to medical reasons. The worker stated benefits were not made available to her. She did not perform similar services for others. It is believed the firm represented her as a representative to its customers. Services were performed under the firm's business name.

The signed agreement, provided by the firm, states, in part, the worker would be paid solely on a commission basis (biweekly). The firm would provide the facility, clerical support, and disposable items, as noted above. The worker would supply and maintain non-disposable items, as noted above. Grooming prices would be determined by the worker. Hours of grooming operations would be agreed upon by the firm and worker. All grooming records were the firm's property. The worker could not work in other grooming facilities within a five-mile radius of the firm and she could not groom the firm's clients outside of the facility without the firm's permission. Either party could terminate the agreement with a two-week notice.

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, the firm's statement that the worker was an independent contractor pursuant to a written 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 grooming services performed by the worker were an extension to the firm’s business operation. The firm provided work assignments by virtue of the customers served, retained customer records, and ultimately 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. 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. “Profit or loss” implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm’s customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. 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 rate of pay arrangement the worker could not realize a profit or incur a loss.

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 an 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.