

SS-8 Determination—Determination for Public Inspection

Occupation

05PHC.35 Animal/Pest Handler

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in the business of providing pet grooming services. The worker was engaged as a dog groomer and bathed dogs as well. She received a Form 1099-MISC for her services in 2013 and 2014. There was no written agreement.

The worker noted that the firm trained her on how to bathe and groom the dogs even though she had some experience as the firm had different methods. The firm, however, indicated that it provided no training as the worker had previous experience as a hair stylist and pet bather/stylist. The firm noted that the worker set her own appointments and fees that were charged to customers. The worker noted that she worked, starting at a specific time in the mornings and stayed until the work was completed, with the firm assigning the appointments. The worker and the customer agreed on what needed to be done; the worker would have to resolve any issues with the customers. The worker, however, noted that it was the firm that handled any issues or problems. The worker was not responsible for soliciting new customers other than getting referrals; however, the firm indicated that she was responsible for developing her own customer base such as from client referrals and occasional walk-ins. The worker submitted a job ticket with the customer payment and deposited both into the register. These tickets would be reconciled weekly to determine the commission to be paid to the worker. The firm noted that the worker determined her own work hours around her scheduled appointments and could come and go as she pleased. Both parties agreed that the worker worked from the firm's location though the firm added that the worker could schedule appointments at a client's place on a case-by-case basis. Only the worker mentioned meetings to attend and noted that she was to provide the services personally.

Both the firm and the worker agreed that the firm provided the facility, utilities, tables, and dryers. The worker indicated that she used the owner's equipment but the firm noted she provided her own grooming tools such as clippers, brushes, comb, scissors, etc. The firm indicated that the worker leased the equipment and the space/facility per a verbal arrangement, paid by the split on commissions which compensated the firm. The worker noted she purchased her own 'uniforms' –black pants and water shoes, the owner provided the apron. The firm noted her expenses would include the split on commissions for the use of facilities; the worker provided her own shampoos, cleaning materials, and tools. Both parties agreed that the worker received an hourly rate of pay plus a per bath fee plus a commission on grooming. Both also mentioned possible economic risk due to loss or damage of equipment. There was disagreement over who the customer paid-each party indicated that the other party was paid. Each also indicated that the other established the prices for the services rendered by the worker.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm indicated that she did. The worker had no restrictions on working for others according to the firm and promoted her services through social media. The relationship has ended..

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

The firm indicated that it relied on Revenue Ruling 57-110, 1957-1 C.B. 329 for guidance; however, this ruling indicated that the barber/worker paid a fixed weekly chair rent. This important element in the ruling was not indicative of how this worker was treated. This instant case, instead, resembles the scenario in Revenue Ruling 73-591, 1973-2, C. B. 337 which determined that a beautician who 'leased' space in a salon, was required to work specific hours, furnished daily reports to the owner regarding her receipts for the day and paid for her own licensing was an employee. The salon furnished, repaired and maintained all the equipment materials and supplies. For her services the beautician received a set percentage of the money taken in by her. She was required to be at her chair at a specified time on those days that she came into work and to perform the services requested by the customers. The beautician furnished a daily report of her receipts on which her pay was calculated.

The worker in this instant case also received a percentage of her grooming receipts, but also received an hourly rate as well. While she might have handled the customer payments and placed them into the cash drawer, her customers paid the firm through the use of a 'common/central cash drawer.' This worker also reported her receipts to the firm by writing a job ticket which was submitted to the firm along with the customer's payment. According to the firm, her pay would then be calculated by the firm, giving the worker her commission and retaining the rest. Since there was no fixed rental amount, the worker had no risk of a loss. In addition, this worker was paid an hourly rate and a 'per dog bath rate.' Payment by the hour, 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. It would be reasonable to assume that the firm knew when she would be there so as to pay her for her hours as well as knowing when she would be there to help. The worker's hours may have been flexible, based on her availability, scheduled appointments and the firm's workload. While 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. The worker's services were performed during the salon's open hours and fees charged were posted/set by the salon even though the worker may have agreed with the customer on services provided and applicable rates.

In addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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. It was the firm that had the investment in the facility and business. 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. The worker had no investment in the facility and equipment as she paid no set rental fee. She also received an hourly rate of pay and per dog bath rate in addition to commission on grooming. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or 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. There were no benefits and there was no written agreement. The worker was engaged to perform some general labor services as well as dog grooming services. When doing so, the worker was not engaged in an independent enterprise. Her services instead were part of the necessary activities of the firm's business operations. 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.