

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.1 Manager	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a limited liability corporation in the business of dog walking services and pet care services which engaged the worker as an operations manager from October 2009 to July 2011. This was pursuant to a written agreement between the parties. The worker had previously performed services for the firm as a dog walker from August 2009 to October 2009.

The worker received one day of instruction to dogs by following another dog walker around. The worker received written instructions regarding the services to be performed from the firm through the firm's computer software. The worker's day typically began at 7:00 AM receiving text messages from the entire staff of the firm. The worker was responsible for performing the services of other workers who did not show for work, she also performed client interviews scheduled by the firm, and received regular bi-weekly remuneration for her services. The firm determined the methods by which the assignments were performed. The firm was responsible for problem resolution. The worker was required to submit reports to the firm's customers to demonstrate she was there and what services were performed. She performed the services on the firm's customer's premises 90 percent and at her home 10 percent. The worker was required to attend all staff meetings, to meet with all new customers and meet all employees daily. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. The worker worked exclusively for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm hired and paid any substitutes or helpers.

The firm furnished the worker with company software and customer keys to their homes so the services could be performed. The worker did not furnish any of the tools or equipment used in performing the services, except for transportation. The worker did not lease equipment. The firm determined the fees to be charged to its customers. The worker did incur expenses for the use of her car but was not reimbursed by the firm. The worker was paid a salary, and as such, was guaranteed a minimum amount of compensation of \$900.00 bi-weekly for her services. The firm's customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker received sick pay. Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties where the worker was prohibited to perform pet services without reporting to the firm. All work produced became the property of the firm. All advertising was done for the firm to increase its customer base. The worker completed an application for a job. She was required to perform the services under the name of the firm and for the firm's customers. The worker provided an employee agreement and an email introducing her to the entire staff of the firm. The relationship between the parties ended when the worker resigned.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's customer's premises and at her home, on a regular schedule set by the firm. The firm provided all significant materials to the worker. The worker could not incur a business risk or loss. The worker was paid a salary. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she completed an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.