

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.6 Animal/Pest Handler	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 corporation in the business of providing their customers with a mobile grooming service. The worker was engaged by the firm to perform services as an assistant/groomer. There was no written agreement between the two parties.

The firm trained the worker how to perform her services. The firm gave the worker her assignments and determined how those assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker was required to report to the firm on the services she performed. The worker's schedule was set according to the firm's clients' needs. The worker performed her services at the customers' locations in the firm's vehicle. The worker was required to perform the services personally.

The firm provided the work vehicle tools and supplies the worker needed to perform her services. The worker provided her own personal hand tools. The worker was reimbursed by the firm for any out-of-pocket expenses when she provided her services for the firm. The worker was paid on an hourly basis. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of her duties. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others at the same time she performed services for the firm. The worker stated she was represented as a groomer or an assistant performing services under the firm's business name. The worker terminated her services from the firm without incurring a liability.

The worker provided copies of her pay documents for 2013. The worker provided a copy of a business card with the owner's name, address, phone number and e-mail address. The worker provided copies of the log book for her assignments and a copy of a sheet showing the services she performed for the clients.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. See Rev. Rul. 70-309, 1970-1 C.B. 199. "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.

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.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the worker firm trained the worker, gave the worker her assignments and determined how those assignments should be performed. The firm controlled the worker's schedule as the worker was required to accommodate the needs of the firm's customers. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. The firm provided the worker with a vehicle, equipment and supplies for the worker to perform her services which demonstrated the firm had the financial investment with the services provided to the firm's customers. The worker did provide some of her own personal hand tools which is a common practice and does not lean toward the worker being self-employed. The worker's services were integrated into the firm's daily operations as the worker performed services under the firm's business name.

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 go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989