

**SS-8 Determination—Determination for Public Inspection**

Occupation 05PHC.15 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 in the business of operating a dog grooming salon. The worker was a dog groomer who provided services for clients by appointment at the firm's facility; she also had been promoted to manager as well. The worker had received a 2013 Form W-2 for her services; in 2014, she received both a Form W-2 and Form 1099-MISC. The firm indicated that it had made an error when it provided the worker with a Form W-2. There was no substantial change in services and there was no written agreement.

Both the firm and the worker indicated that the firm provided no training or instructions. The firm noted that the worker worked according to her own schedule with her own clients; the worker noted that the clients scheduled the appointments. Both parties agreed that the worker determined the methods by which the assignments were performed. Both also agreed the firm's owner would be contacted to resolve any problems or issues. No reports were required. The worker's routine consisted of scheduled days where she would open the salon, check clients/pets in/out, schedule appointments, perform grooming, then clean and close salon; the hours were by appointment, all at the firm's location. The firm, however, noted that there was no daily routine, fixed hours, or work schedule-the worker used the firm's facility to perform her services with her own clients and shared fees with the firm. There were no meetings. Both parties agreed that the worker was required to provide the services personally. The worker noted that she could not hire and pay others but the firm noted that the firm could hire substitutes.

Both the firm and the worker agreed that the firm provided the premises, water, shampoo, dryer, cages, and utilities. Both also agreed that the worker provided her own grooming tools. The worker noted that she purchased her own business cards. Both agreed that the worker was paid a commission and had no other economic risk. The worker noted that the customer paid the firm; the firm indicated that both the firm and worker were paid but indicated that the worker turned over the entire amount to the firm. Each party indicated that the other established the level of payment for services.

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; the firm disagreed. The worker had business cards printed for herself as salon manager and groomer with firm name and logo. The firm also mentioned that she advertised via facebook and Instagram. The relationship has ended.

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## Analysis

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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.

There are similarities between this case and Revenue Ruling 73-591, 1973-2, C. B. 337. In that ruled case, it was 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 as 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. In contrast, Revenue Ruling 73-592 1973-2 C.B. 338 determined that a beautician who rented a booth in a beauty salon for a fixed monthly fee, sold and styled wigs she purchased herself, retained the proceeds with no guaranteed minimum amount, selected her own customers, set her own schedule, adhered to shop rules, and maintained her own tools was engaged in a trade or business.

In this instant case, the worker also received a percentage of her receipts, guaranteeing her a minimum. Her serviced clients paid the firm through the use of a 'common cash drawer.' The worker's receipts/services were reported to the firm when the appointments/services were completed and paid. The firm used the information to calculate her pay; she was paid once a week. The firm set the fees charged depending on the service. The worker paid no set rental fee for the use of the firm's facility, equipment and supplies. While her hours and work schedule were flexible, based on scheduled appointments, her services were performed during the salon's open hours. The firm advertised its hours and the associated fee structure for its salon. The worker provided her services on a continuous basis throughout the time period involved. All of these elements support an employer-employee relationship.

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. 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 addition, 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.

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 a dog groomer at the firm's dog grooming salon. She was not engaged in an independent enterprise but rather the services performed by the worker were part of the necessary activities of the firm's 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 for the entire time period involved and not an independent contractor operating a trade or business.