

## SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Farm/Ranch workers

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ 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 firm is operating horse boarding and pet care services to customers. The firm engaged the worker to perform services for the firm's business operation. The firm provided the worker with training and instructions on the business operation. The firm scheduled the worker to perform services on a monthly basis based on the firm's business needs and the worker's availability. The worker was required to contact the firm regarding any problems or complaints for resolution. The worker provided the firm with texts of when services were completed. The worker performed the services at the firm's place of business. The worker was required to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided transportation to come and go to worker and personal items, no business expenses were incurred by the worker. The firm did not reimburse any expenses. The firm paid the worker an hourly wage for care of horses and daily rate for pet care services and the customers paid the firm. The firm and worker entered into verbal agreements regarding the payment for services per the firm. The firm did not carry worker's compensation insurance. The firm indicated the worker's economic loss and financial risks were related to damage to real property, animals, and ranch equipment.

There were no contracts between the firm and worker. The firm provided no benefits. The firm did not know if the worker performed similar services for others or advertised as a business to the public when performing services for the firm. The worker indicated no similar services were performed for others and no advertising done as a business. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm provided the worker with training and instructions on business practices and procedures, assigned the worker schedules to work monthly based on the firm's business needs and worker's availability. The firm required the worker to contact the firm for resolution of problems or complaints. The firm required the worker to perform the services personally at the firm's place of business. Substitutes or helpers were hired and paid by the firm. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided everything the worker needed to perform the services. The worker did not incur any business expenses. The firm paid the worker a set amount per day and per hour based on services performed and the customers paid the firm. The firm and worker verbally agreed to the amount paid to the worker for the services. The firm determined the level of payment the customers paid for the services. The worker could not suffer any economic loss due to on-going significant business capital investments being made. The worker did not have control over profits made and risk any losses with regard to performance of the services for the firm's business operation. The risk of losses due to damages to equipment etc. would not be considered having control over profit and loss in the costs associated with the operation of a business. No legal documentation was provided to support this to be a risk that could be incurred by the worker. These facts evidence financial control by the firm over the services performed by the worker.

There were no written contracts between the firm and the worker. The firm indicated there was a verbal agreement concerning the daily rate payment and hourly wage payment. It is noted that whether there is an employment relationship subject to withholding of employment taxes is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties oral or written. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's place of business on a regular variable monthly scheduled basis over several months under the firm's business name.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.