

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW Poultry Farm Laborer	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 in the business of operating a poultry farm. The worker was engaged to grade and collect hatching eggs, run equipment, clean and maintain the firm's facility. She received a 2017 Form 1099-MISC for her services. There was no written agreement.

The firm noted that no training was provided; however, the worker received on-the-job instructions. The firm assigned the worker her tasks by posting instructions on equipment, doors, and the office as well as by giving them directly. Each party indicated that the other determined the methods by which the assignments were performed, but both agreed that the firm would be contacted if any problems or issues arose. The firm noted that there were no reports required. The worker mentioned reporting on inventory, mechanical failures, intruders, damage, pests, unhealthy fowl, etc. The firm described the worker's routine as all hours of the day, but mostly 8am-5pm, with breaks determined by the worker. The worker described her routine activities such as collecting and documenting four consecutive belt runs of eggs, fixing failed machinery, running feed equipment, and staying until work for the day was completed. Both parties agreed that all services were performed at the firm's farm. There was disagreement about who would hire/pay any substitute workers; however, it was the firm that noted the worker was to provide the services personally.

The firm provided the machines and tractor; the worker added that the firm also provided supplies, tools, parts, boots, and equipment. According to the firm, the worker provided other supplies, tools and equipment as well as incurred expenses of gas, meals, clothing, footwear, tools and cleaning supplies. The worker only mentioned transportation expenses. She was reimbursed for the cleaning supplies according to the firm. The worker was paid weekly, allowed advances on request as needed for supplies and shared the firm's economic risk. The worker noted that she was paid by the hour. Both parties agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits other than bonuses, 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 relationship ended when the worker quit.

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. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker worked according to the firm's weekly schedule. It is unreasonable to assume that the worker could come and go as she pleased in this type of operation. 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. All of her services were performed at the firm's premises. This element also supported the right of the firm to control the worker's activities. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker. The worker was to provide the services personally indicating that the firm was interested in the methods used to accomplish the work as well as in the results. While there was no formal training, she received on-the-job training from another worker. The firm gave the worker her work assignments which became part of her work routine. The worker was to personally provide the services and provided those services continuously during the time period covered. 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 provided the facilities, equipment, and necessary items to operate and maintain the poultry operation. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. While the worker may have provided some small tools, and clothing, those items would not be considered a significant investment on which to incur a profit or loss. The worker was reimbursed for any cleaning supplies she needed and was advanced money for that purpose as well. She received an hourly rate of pay and in fact, punched a time clock and was paid weekly. 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.

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 other than bonuses and there was no written agreement. The worker was engaged to provide labor for the firm's poultry operation. When doing so, the worker was not engaged in a separate business venture. 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 as well as Publication 51, (Circular A), Agricultural Employer's Tax Guide.