

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Farm Laborer

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 a cattle farming business. The firm engaged the worker to install fence at the farm as an independent contractor. No training was provided by the firm. The job was assigned by the firm. The firm determined the methods to use to perform the services. The worker was not told whom to contact to resolve problems or complaints. No reports were required by the firm. The worker was allowed to perform the services on his own schedule at the farm. The firm required the worker to perform the services personally. No substitutes or helpers were hired or paid.

The firm provided the materials, equipment, and supplies need by the worker to perform the services. The worker did not lease anything or incur any business expenses. The firm paid the worker a set amount when the job was completed per firm and worker stated being paid an hourly wage. No drawing account was allowed. The firm did not carry workers' compensation insurance. The firm did not have any business customers but had farming business income that was used to pay the worker for performing the services. The firm indicated the worker determined the level of payment for the services and the worker stated the firm determined this issue.

There were no contracts between the firm and worker. The firm did not provide the worker with any benefits. The firm did not know if the worker performed similar services for others and the worker stated no similar services were performed for others while performing the services. The worker did not advertise as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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. 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 the equipment, materials, and supplies needed by the worker to perform the services. The firm paid the worker for performance of the services when completed. The firm controlled the cost of operating the farm. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the public. Both parties 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.