

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW Farm Hand	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 riding, teaching and boarding facility for horses. The worker was engaged as barn/stable help who groomed, and tacked horses, administered supplements, and closed the barn for the night. He received a 2017 Form 1099-MISC for his services. There was no written agreement.

The worker indicated that he was trained in all procedures that involved the care of horses including medication and grooming techniques. Both parties agreed that he received his daily task assignments from the firm who determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. Only verbal and informal reporting was done. Both also agreed that the worker arrived at the scheduled time, checked the appropriate schedules and task lists. He performed the assigned duties. All his services were provided at the firm's premises. Both parties agreed that he was required to personally provide the services.

Both the firm and the worker agreed that the firm provided all the grooming supplies, equipment, tools and the place to work. Both also agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The worker did not establish the level of payment for services; the firm noted that it was mutually agreed upon.

Both the firm and the worker agreed that there were no benefits though the worker mentioned personal days and cash bonuses on holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship has ended.

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. 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.

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 provided labor for the firm's operation of its equine facility. The worker was provided with instructions and guidance involving the daily tasks that he was to perform. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. While his scheduled hours may have had some flexibility, those working hours were scheduled by the firm. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control; however, 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. The worker was to provide the services personally; this was understandable as he had received instructions about the daily chores, even if just initially. 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.

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 had the investment in the facility, equipment, tools, and supplies. The worker simply received an hourly rate of pay and had no other economic risk. 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. The worker was engaged to provide labor for the firm's equine facility. It is acknowledged that his services were for brief periods of time. However, when working for the firm, the worker was not engaged in an separate business venture. The fact that his services were temporary did not establish a business. 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 for the entire work relationship 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.