

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Ranch/Farm worker

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 involved in training hunting dogs. The firm acknowledged having a hobby farm which also had cattle and horses. The worker was engaged as a ranch hand who performed basic chores, and took care of the animals. The worker received a 2017 Form 1099-MISC issued for his services under the firm's EIN (Employer Identification Number). That document had been submitted to the IRS. There was no written agreement.

Both the firm and the worker agreed that the firm provided no training. The firm's owner told the worker what to do each day either verbally or by written notes; the firm indicated that both agreed to the work assignments and the methods, though the worker indicated that it was only the firm. Both parties agreed that the firm would be contacted if any problems or issues arose. There were no required reports. The worker worked during set scheduled hours, cleaning dog kennels, feeding horses and cattle, fixing fence, as well as feeding/watering quails and pigeons. He also mowed and weeded around the property. The firm noted that both agreed to the worker's daily routine; hours varied dependent on services needed and the availability of the worker. Both parties agreed that all of the worker's services were performed at the firm's location. There were no meetings. The firm noted that the worker was to provide the services personally.

Both the firm and the worker agreed that the firm provided feed, hay, and gas for the weed eater, essentially everything needed in order for the worker to provide his services. Both agreed that the worker was paid an hourly rate and had no other economic risk. Only the firm noted that there was a mutual agreement regarding 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 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 firm engaged the worker to provide labor for the firm's operation of a hobby farm/dog training. The worker was provided with instructions on what was needed. 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. It would be reasonable to assume that there was an hourly work schedule, as it involved the feeding of animals. While the worker's services were for a brief of time, those services were continuous. 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. The firm had the investment in the farm/ranch, 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. There were no benefits and there was no written agreement. The worker was engaged to provide labor for the firm's dog facility/hobby farm. When doing so, the worker was not engaged in a separate business venture. Instead, his services were integrated in the firm's operations showing 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.

The worker may have provided similar services for others. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Again, if the worker supplied his labor to others under similar circumstances, it did not mean he was self-employed.

The firm also indicated that the worker wanted to be paid as an independent contractor. However, in *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B.174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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.