

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 in the business of horse racing. The worker is engaged by the firm as a groom/hot walker. The firm did not withhold taxes from the the worker's remuneration in 2016, 2017, and 2018.

Information from the parties supports that the firm relies upon the worker's prior training and experience to perform her services. It provides the worker with daily work assignments. The firm determines the methods by which the worker performs her services. If problems or complaints occur, the worker contacts the firm for resolution. The worker's schedule varies. She performs her services on the firm's premises. The firm stated that the worker is not required to perform her services personally.

The firm provides all supplies and equipment. The worker does not incur expenses in the performance of her services. The firm pays the worker at a set rate. It covers the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation

The firm does not make benefits available to the worker. The firm does not prohibit the worker from providing similar services for others during the same time period. There is no evidence submitted showing the worker advertises her services or maintains a business listing. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, while the firm relies upon the worker's prior training and experience to perform her services, it is responsible for resolving any problems or complaints that may occur, showing the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker performs her services on the firm's premises. There is no indication that the worker can engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services she provides. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. These facts show that the firm retains control over the financial aspects of the worker's services.

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. In this case, the worker performs her services on a continuing basis. She is not engaged in an independent enterprise, but rather the services the worker performs as a groomer and hot walker are a necessary and integral part of the firm's horse racing 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 business. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.