

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 worker submitted a request for a determination of worker status in regard to services performed for the payer from June 2017 to December 2017 as a laborer. The work done by the worker included caring for and feeding horses, cleaning stalls and barns, and grounds keeping. The payer issued the worker Form 1099-MISC for 2017. The worker filed Form SS-8 as taxes were not withheld from his earnings. The worker believes he was an employee as the payer controlled what he did and how he did it. The payer controlled all business aspects and provided all materials and equipment. There was no written agreement between the parties.

The payer's response states it is a horse farm business. The worker was engaged to clean stalls and the barn, i.e. remove manure from each stall and fill water buckets. The payer provided specific instruction when the worker first started to perform services, i.e. time to show up, removal of manure and fill water buckets, and how he would know when the task was completed. The payer did not supervise the worker, tell him how to do the task, or in what order to do tasks.

The payer stated it provided the worker specific instruction related to days to show up to work, task to be done, and what constituted a completed task. Instruction was provided the first day of work. The worker determined the methods by which assignments were performed. The payer was contacted and responsible for problem resolution. Reports and meetings were not required. The worker performed services twice weekly for four hours. Services were performed at the payer's premises. The payer required the worker to personally perform services. Hiring substitutes or helpers was not applicable. The worker stated the payer provided specific instruction related to feed and medications needed by each horse, how stalls were to be cleaned, and where horses were to be turned out. The payer was responsible for hiring and paying substitutes and helpers.

The payer stated it provided a pitchfork and wheelbarrow. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the payer. Customers paid the payer. The payer paid the worker a fixed daily rate of pay; a drawing account for advances was not allowed. The payer did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The market rate established the level of payment for the services provided. The worker stated the payer also provided tractors and feed. He was paid salary. The payer established the level of payment for the services provided.

The payer stated the work relationship could be terminated without penalty. The worker did not perform similar services for others or advertise. There was no agreement prohibiting competition between the parties. The payer represented the worker as a contract laborer to its customers. The work relationship ended when the worker quit. The worker stated benefits were not provided. The payer represented him as an employee to its customers. Services were performed under the payer's business name. The worker quit to attend college.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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. In this case, the payer provided specific instruction related to task to be performed. The payer also provided work assignments by virtue of its customer and assumed responsibility for problem resolution. These facts evidence the payer retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's past work experience and work ethic the payer may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the payer retained the right to do so if needed.

Payment by the hour, day, 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. In such instances, the payer assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the payer has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case and as acknowledged by the payer, the worker did not invest capital or assume business risks. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. As acknowledged by the payer, the worker did not incur economic loss or financial risk. Based on the fixed daily rate of pay arrangement the worker could not realize a profit or incur a loss.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the payer's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, we conclude that the payer 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.

The payer can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.