

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 initiated the request for a determination of her work status working with horses in tax year 2017, for which she received Forms W-2 and 1099-MISC. She noted that she was an assistant to the Mare Manager between May 2014 to May 2015 and was issued Form W-2. She stated she signed an Employee and (the firm's) Rules and Regulations Agreement in addition to a Housing Agreement; but, was not provided a signed copy. Form W-2 was issued for tax years 2018 and 2019. The firm's business is described as equine reproduction and training.

The firm's response was signed by the CEO. The firm's business is breeding, selling, and showing cutting horses. The worker provided services as laborer; she was given a list of horses to breed and care for.

The worker indicated she was not given specific training since she was hired for her equine degree; but, was given instructions as to which horses were to be bred and which horses were going for training. The job assignments were via weekly/daily text messages and phone calls. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker stated daily ranch activity reports were required. The worker's services were rendered on the firm's premises 24/7 on-call during foaling and breeding season, feeding 60-100 horses, giving medications, assisting with stall cleaning, seasonal ranch duties, reproduction, pasture maintenance, foaling, and training. A verbal conference call was required every two months. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, the worker was provided a list of horses to breed and with which stallion; she was required to report successes and failures and the firm would revise the list as needed. The worker was hired with a single task - the list of horses to be bred. The worker determined the methods by which she performed her services. Any problems with the horses were directed to the veterinarian for resolution. The worker's services were rendered at the firm's location. She worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm and worker acknowledge the firm provided horses, facilities, all supplies, tools, equipment (tractors, hotwalkers, etc.), materials (feeds, medications, etc.), and housing. The worker furnished nothing other than personal clothing and did not lease equipment, space, or a facility. The firm paid the worker the agreed upon salary every two weeks. Any customers involved in the processes paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship unless there was a loss of housing. The firm stated the worker established the level of payment for services provided; the worker disagreed.

Both parties concur that no benefits of health insurance, sick pay, or paid vacations were extended to the extended to the worker; although the worker indicated she received bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The firm responded the worker was hired as a W-2 employee after the brief contract laborer time (trial period time after she had quit in 2015); and was hired again November 2017 until January 2019, when she quit. The worker stated she provided 30-day notice and was fired the same day.

The firm provided the 2017 breeding plan and amended plan as well as the State's ruling as to unemployment benefits (denied because she quit without cause).

Analysis

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.

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.

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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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.

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. In such instances, the firm 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 firm 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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 firm's business.

CONCLUSION

We conclude that the firm 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.