

**SS-8 Determination—Determination for Public Inspection**

## Occupation

01FRW Barn Manager

## 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 firm from February 2016 to February 2019 as a barn manager. The firm issued the worker Form 1099-MISC for 2017 through 2019. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error because the firm provided all equipment and supplies needed for job duties, created a weekly schedule for the worker, supervised the worker, made decisions on business matters, and instructed the worker on how to perform duties.

The firm's response states it provides horse riding lessons. The work provided by the worker was cleaning horse stalls. The firm believes the worker is an independent contractor because the worker did not have set hours, did not need keys to perform their job duties, and performed duties when they felt they wanted to do so.

The firm states that the worker did not receive training since they already knew how to do the work. The worker performed the same job duties every time. The firm states that the worker determined the methods by which job duties were performed. The worker was required to contact the firm's owner in the eventuality that they encountered any problems or complaints while working. The worker was not required to provide the firm with any reports. The worker did not have a set schedule and all job duties were performed at the firm's horse stable location. There were no meetings required of the worker. The worker was required to perform all services personally and helpers and substitutes were not applicable to the work situation. The worker states that they received equine-related knowledge necessary for the job duties prior to working for the firm through volunteering at the firm's premises. The firm's owner provided other training regarding job duties. The firm's owner provided the worker with weekly schedules. The worker provided a copy of a weekly schedule to demonstrate this point. The worker's duties included cleaning and feeding horses, instructing riding lessons, and doing other farm-related job duties. The firm's owner determined the methods by which job duties were performed. The worker was required to contact the firm's owner for problem resolution if they encountered any issues on the job. The worker was required to provide informal sheets/calendars reporting how and when horse stalls were cleaned and other farm duties that were performed. The worker attached examples of these reports. The worker was also required to verbally check-in with the firm owner regarding job duties. The worker performed stall cleaning duties for a few hours in the afternoon, followed by assisting with horse riding lessons. The worker fed horses before or after lessons and performed cleaning and repair services as needed. The worker provided these services on the weekends during flexible hours. All job duties were performed on the firm's premises. No meetings were held and the firm's owner would hire and pay any helpers needed.

The firm states that the worker provided their own pitchfork but that no other equipment or supplies were needed. The worker did not lease any space, facilities, or equipment. The firm states that the worker did not incur any expenses. The worker was paid by the stalls that they cleaned. The firm did not carry worker's compensation insurance on the worker. The worker did not have any exposure to financial risk. The firm states that the worker set the level of payment for services rendered. The worker states that the firm provided the horses and horse-riding supplies, horse grooming equipment, wheelbarrows and other cleaning supplies, helmets, liability waivers for horse riders, pitchforks, and a riding arena and pasture. The worker was able to use their own saddle with the firm's permission, but customers did not use the worker's saddle. All minor expenses related to the job were reimbursed by the firm's owner. The worker was paid an hourly wage or by the stall cleaned, depending upon the work that was performed, with no access to a drawing account for advances. The worker attached a letter of employment from the firm stating that they received an hourly wage and was employed by the firm. Customers of the firm paid the firm. The worker states that they were not responsible for any damage or loss to equipment or supplies. The worker states that the firm's owner set the level of payment for services rendered.

The firm states that they did not provide the worker with any job benefits. The relationship between the parties could be terminated by either party without liability or penalty. The firm states that the worker performed similar services for other firms during the work relationship and did not need approval from the firm to do so. There were no non-compete agreements in place between the parties. The worker was not a member of a union. The worker did not advertise their services to the public. The firm does not state how they represented the worker to their customers. The work relationship ended when the worker quit working for the firm in pursuit of working for a similar farm. The worker states that they were provided with personal days as a job benefit. The relationship between the parties could be terminated by either party without liability or penalty. The worker states that they did not provide similar services for other firms during the course of the work relationship. The worker states that the firm represented the worker as an employee of the firm, performing all work under the firm's name. The worker quit, thus ending the work relationship.

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## 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of offering horse riding lessons. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed through an informal calendar and verbally, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm 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 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. In this case, the worker did not invest capital or assume business risks. The firm provided all supplies, materials, and equipment for the job duties. 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. Based on the hourly 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 firm'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 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.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.