

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

Occupation

Agriculture

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 connection with services performed for the firm in 2020 and 2021 as a stable hand. The services performed included cleaning stalls, turning horses in and out, feeding, maintaining the cleanliness of the barn, and ensuring the care of horses. The firm issued the worker Form 1099-NEC for 2020. The worker anticipates also receiving Form 1099-NEC for 2021. The worker filed Form SS-8 as she believes she received Form 1099-NEC in error.

The firm's response states its business is boarding horses. Lists of work needing to be done are made and workers choose which days they want to work. The worker was classified as an independent contractor as she chose what days to work and offered the same services to other boarders, receiving payment for services directly from those boarders. There was no written agreement between the parties.

The firm stated it instructed the worker on which horses needed care or stalls cleaned. A day-to-day list provided work assignments. The horse owner and worker determined the methods by which assignments were performed. The firm was contacted if problems arose. Responsibility of resolution depended on the problem. Report and meetings were not required. Services were performed at the firm's barn facility. The worker would split the daily horse care tasks with another worker. The firm did not require the worker to personally perform services. The worker had friends and family help. The worker was responsible for paying substitutes or helpers. The worker stated the firm determined the methods by which assignments were performed and assumed responsibility for problem resolution. She performed services on a regularly scheduled basis. The firm required her to personally perform services. The firm was responsible for hiring and ultimately paying substitutes or helpers.

The firm stated it provided some of the feed. The barn owner supplied shavings. Wheelbarrows were provided by boarders. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the firm unless she wanted to purchase her own equipment. Customers paid the firm. The firm paid the worker piece work; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The worker did not establish the level of payment for the services provided. The worker stated she did not incur expenses in the performance of services for the firm. The firm established the level of payment for the services provided.

The firm stated benefits were not made available to the worker. The work relationship could be terminated by either party without incurring liability or penalty. The worker performed similar services for others; the firm's approval was not required for her to do so. There was no agreement prohibiting competition between the parties. It is unknown if the worker advertised. The firm represented the worker as a worker or barn helper to its customers. The work relationship ended when the worker obtained another job. The worker stated she did not perform similar services for others or advertise. Services were performed under the firm's business name.

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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.

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 services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customers served, collected customer payment for services performed, and ultimately 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 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.

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. In this case, 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 firm, the worker did not incur economic loss or financial risk. Based on the piece work 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.