

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.1 Farm/RanchWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a sole proprietor operating a horse farm. The firm engaged the worker as a farm hand. There was no written agreement between the two parties.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

The worker stated she received training from the firm and the firm stated the worker was already knowledgeable in this line of work. The worker had a regular schedule for the assignments she needed to perform each day. The worker relied upon the firm to resolve problems and complaints. The worker stated she had a regular schedule from 9 a.m. to 5 p.m. The worker provided her services at the firm's location. The worker was required to perform the services personally.

The firm provided the worker with everything she needed to perform her services. The worker was paid on an hourly basis. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of her duties. The worker's pay was established at the beginning of the work relationship.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others at the same time she performed services for the firm. The firm represented the worker as their barn manager. The worker terminated her services because she was relocating.

The firm provided a copy of consistent payments for 2008, a time sheet for 2009 and 2010 along with payments, copies of a W-9 signed by the worker along with copies of pay documents.

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the worker was given her work assignments by the firm which demonstrated control by the firm. The worker was required to perform the services personally which demonstrated the firm was interested in the methods used as well as being interested in the end result as an employer. The fact the worker relied upon the firm as an employer to resolve her problems and complaints showed an employer-employee relationship existed. It was the firm that had the financial investment since the firm provided the worker with the location and all supplies, equipment and materials the worker needed to perform her services. The firm set the hourly rate of pay for the worker which showed financial control by the firm. It was the firm that could suffer a significant loss since the firm was responsible to collect the amount they charged to their customers. The fact the worker was referred to as the firm's barn manager showed the worker's services were integrated into the firm's daily operations.

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.

This determination is based on the application of law to the information presented to us and/or discovered by us during the course of our investigation; however, we are not in a position to personally judge the validity of the information submitted. This ruling pertains to all workers performing services under the same or similar circumstances. It is binding on the taxpayer to whom it is addressed; however, section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989