

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.2 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 in business as an equine training, boarding, and showing facility. The worker is engaged by the firm as an assistant trainer. The firm reported the worker's remuneration on Forms 1099-MISC for 2012, 2013, and 2014. The parties signed an independent contractor agreement on June 11, 2012.

Information from the parties supports that the firm instructs the worker on what horses are to be trained on any given day. The worker determines the methods by which she performs her services according to her prior training and experience. If problems or complaints occur, the worker contacts the firm for resolution. Her schedule is determined by the needs of the facility. The worker performs her services on the firm's premises. The worker is required to perform her services personally.

The firm provides the property and is responsible for its associated costs. The worker provides her own tack and any specialty clothing for performance showing. She does not lease space or equipment. Customers pay the firm directly at prices established by the firm. The firm pays the worker on a salary basis. It does not cover her under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm does not make general benefits available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability with a 30-day notice. The firm stated that the worker provides similar services for others. There is no indication that the worker advertises her services or maintains a business listing. She provides her services under the firm's name.

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## Analysis

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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, the firm's 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, while the firm relies upon the worker's prior training and experience to perform her services, it is only reasonable to assume that it retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure its customers' satisfaction with her work. The firm provides the worker with her work assignments, and her schedule is dependent upon the services required by the firm. She performs her services on the firm's premises. 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. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retains behavioral control over the services of the worker.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker provides her own tack and specialty clothing. 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. The firm pays the worker on a salary basis. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that the firm retains control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. She performs her services under the firm's name. The worker is not engaged in an independent enterprise, but rather the services performed by the worker as an assistant trainer are a necessary and integral part of the firm's equine facility business. 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. The firm does not prohibit the worker from providing similar services for others; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm does not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicting an employer-employee relationship. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.