

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.3 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 farming operation. The firm engaged the worker through an application process to perform farm hand services as needed at the farm. No formal training was provided by the firm. The worker indicated receiving job instructions in the morning from the firm. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's schedule varied based on job assignments. The worker was required to perform the services personally. The firm indicated not applicable to hiring substitutes or helpers and paying them. The worker indicated the firm hired and paid substitutes or helpers if needed.

The firm provided the farm machinery, equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or incur any business expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage per the worker. The firm indicated compensation paid based on day's work. The firm did not carry workers' compensation insurance. The firm indicated the worker determined the level of payment for the services and the worker stated the firm determined this issue.

There were no contracts between the firm and the worker. The firm did not know if worker performed similar services for others while performing services for the firm. The worker stated no similar services were performed for others. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, you not the worker had control over the methods and means used in the performance of the services. You engaged the worker to perform services as needed at your farm. You assigned the worker services to perform based on your business needs. You provided the worker with job instructions and determined the methods used by the worker to perform the services. You required the worker to contact you regarding any problems or complaints for resolution. You required the worker to perform the services personally. These facts evidence behavioral control by you over the services performed by the worker.

You provided the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or incur any business expenses. You paid the worker an hourly wage based on daily work performed. You determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlay being made. The worker did not have control over profit and loss with regard to the services performed for your farming business operation. These facts evidence financial control by you over the services performed by the worker.

There were no legal contracts between you and the worker. The worker did not perform similar services for others while performing services for your farming business. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for your farming business on a regular as needed basis over a period of about 6 months. Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

For information regarding agricultural employees, you may wish to obtain Publication 51, Agricultural Employer's Tax Guide.