

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.5 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 the business of providing laborers for field harvesting services. The worker was engaged as a laborer for detassling and roguing. He received a 2013 Form 1099-MISC. There was no written agreement.

Only the worker indicated that the firm gave him instructions on how to detassle corn, which plant to cut, how to determine a male or female plant as well as where to start and end. He received his work assignments as part of a group though the firm indicated he worked as much as he wanted to. Each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm's foreman would be contacted if any problems arose. There were only verbal reports with the firm noting that the worker would tell the firm when he was done. The worker noted that he worked Monday-Sunday, 6AM-8PM, at the customers' locations out in the field; the firm noted that he would come and go as he pleased as it was a seasonal job. Both parties agreed that the worker was required to provide the services personally.

The firm noted that it provided nothing; however, the worker noted that the firm provided shovels, gloves, hair nets and handkerchiefs. The worker provided work clothes. Both parties agreed that the worker was paid piece work and had no other economic risk. The customer paid the firm. The firm noted that it carried worker's compensation insurance on the worker. Both parties agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm indicated that it did not know. The relationship ended when the job was completed; the firm noted that the worker did not want any more work.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Though the firm indicated that it did not provide instructions, this was not reasonable as the firm also mentioned that it was the worker's first job. Besides being told what to do and how to do it, there were set scheduled hours and days - this was seasonal work. 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.

While the worker might have not worked every day available, he did provide his services continuously throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker was compensated on a piecework basis (likely per row of corn); however, he had no other economic risk other than the loss of this compensation.

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. There were no benefits and there was no written agreement. In this case, the worker was a student working a summer, seasonal job. He was not engaged in an independent business venture. His farm-labor services were part of the firm's regular business activities of providing labor to farming operations. 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.

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. For further information regarding agricultural employees, please obtain Publication 51, Agricultural Employer's Tax Guide.