

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.6 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

In this case, the firm (payer) is operating a farm. The worker was engaged to build /repair fences and take care of livestock. He received a 2013 and 2014 1099-MISC for his services. There was no written agreement.

The worker noted that the payer showed him how to do each specific job and sometimes worked alongside of him; however, the payer noted that the worker indicated that he was experienced. Both parties agreed that the worker had to be told daily what needed to be done. Both also agreed that the payer determined the methods by which the assignments were performed, though the payer indicated that the worker still did it the way it was done at his previous place of work. Both parties agreed that the payer would be contacted if any problems or issues arose. No written reports were required. The worker noted that he worked from 8AM; he clocked-in, got into the truck with the payer and went to work. He made/repared fencing, fed animals, picked-up debris, mowed, swept, performed vehicle repair and worked in the fields. The payer noted that there was no set schedule but that the worker usually worked eight hours a day. Both agreed that the worker worked at the payer’s farm. The payer noted that the worker was required to provide the services personally and that the payer helped him if needed.

The payer provided all supplies and tools according to the worker; the payer noted that it provided just the supplies. The worker noted that he provided the needed clothing; the payer mentioned that the worker provided tools. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. The payer noted that he (the payer) suffered a financial loss when correcting the worker’s errors.

Both the payer and the worker agreed that there were no benefits (worker mentioned one paid holiday) and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the payer did not know. Both agreed that the relationship ended when the worker was fired.

Analysis

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 payer retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The payer provided the worker with instructions and his assigned duties. He performed his services according to the payer's scheduled work hours and days. 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. In addition, the worker provided his services on a continuous basis 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.

It is acknowledged that the payer indicated that the worker did not perform his services the way he was told and eventually the worker's services were terminated. The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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 worker simply received an hourly rate of pay and had no other economic risk. 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.

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. The worker was a farm worker/ranch hand providing labor at the payer's farm operations. He was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the payer's farm 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 payer 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.