

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.7 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 payer is a farm. As the owner of the farm, you engaged the worker to perform repair and maintenance services on the farm's tractors and to perform other duties as assigned. You reported the worker's remuneration on Forms 1099-MISC for 2010 through 2014.

Information from the parties supports that you relied upon the worker's prior training and experience to perform his services. You provided the worker with a daily list of tasks that needed to be done that day, either on a dry-erase board or verbally, including plowing, planting, harvesting, mowing side ditches, painting and restoring your and your associates' tractors, routine maintenance on your tractors, and cleaning your shop. If problems or complaints occurred, the worker contacted you for resolution. The worker's schedule was determined by your farm's needs, especially during harvesting. The worker performed his services in your shop and fields. He was required to perform his services personally. If additional personnel were needed, you were responsible for hiring and compensating them.

You provided the shop, property, tractors, parts, etc. The worker utilized his personal tools and truck. You paid the worker at an hourly rate. You did not cover him under workers' compensation. The worker did not indicate an investment in your farm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. You did not prohibit him from providing similar services for others during the same time period. There is no evidence presented that the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship when he found another job.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while you relied upon the worker's prior training to perform his services, it is only reasonable to assume that you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. 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. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for you on his 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 you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. The worker was not engaged in an independent enterprise, but rather the repair and maintenance services, and other services, performed by the worker were a necessary and integral part of your farm's 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 worker could have performed similar services for others during the same time period; 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 you did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. 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. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.