

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.08 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 an individual payer operating a farm. The worker was engaged as a farmhand. He received a 2012 and 2013 Form 1099-MISC for his services. He also worked in 2014 but there was no evidence of a pay document being issued. There was no written agreement. The firm indicated that it had corrected the 2013 year; however, no evidence was found to support this.

The firm provided general instructions regarding the farm work and the worker received his work assignments daily. Both parties agreed that the firm determined the methods by which the assignments were informed and would be contacted if any problems or issues arose. The worker's routine consisted of arriving at work in the morning to feed and check the cattle. He did assigned chores such as tractor work, farm repairs and maintenance, then fed the cattle again and left. All his services were performed at the firm's location. Only the worker noted that he was required to provide the services personally; both agreed only the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided everything such as equipment and supplies. Both agreed that the worker was paid an hourly rate and had no other economic risk.

Both the firm and the worker agreed that there were no benefits other than a year-end bonus, and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship had not ended at the time of the SS-8 responses.

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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. The firm provided the worker with instructions and his assigned duties. He worked according to the firm'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.

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 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. The firm provided the needed equipment, tools, and supplies for the worker who had no investment in the farm operation.

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 farmhand engaged by the firm. In this case, he was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the farm's 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.

Section 3121(g)(1) of the Internal Revenue Code, relating to the FICA, provides that the term "agricultural labor" includes all services performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife. Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses, and other similar structures as are used primarily for the raising of agricultural or horticultural commodities.

Therefore, in this case, as the employer of the worker, the firm would be liable for FICA and FUTA taxes for the worker, absent the application of limited exceptions. If the firm pays the employee's tax for federal income, social security and Medicare in lieu of collecting it from the employee, this amount must be included in the employee's wages for income tax purposes. However, they are not counted as social security and Medicare wages or as federal unemployment (FUTA) wages.

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

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.