

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.10 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 operates a farming business regarding alfalfa and grains. The worker was engaged to perform services as a laborer, whose duties included irrigating crops, building fences, hauling hay, and weed control. The firm considered the worker to have performed his services in the capacity of an independent contractor, and issued to him a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received instructions from the firm on what needed to be done. Work assignments were given on a daily basis by the foreman. Work methods were determined by the foreman or the firm's owner. The worker contacted the foreman regarding problems and complaints that needed resolution. The worker was required to perform his services personally, at the firm's premises.

The firm provided all supplies, equipment, materials, and the property needed to perform the services. The worker provided some tools, and protective clothing. The worker incurred expenses for tools, protective equipment, and wear and tear of his personal vehicle. The firm paid the worker on an hourly wage basis. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services he performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others while engaged by the firm. There was no information provided to evidence that the worker operated a business of his own performing similar services for others. The worker relationship was continuous as opposed to a one-time transaction.

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## Analysis

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed his services under the firm's supervision, following the firm's instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)

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.

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