

## SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.14 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 farm and ranch. The worker provided general ranch labor such as planting and watering trees, mowing fields, feeding horses, etc. He received a 2013 1099-MISC for his services. There was no written agreement.

Both the firm and the worker agreed that there was no training provided. The firm noted that it provided general instructions regarding the tasks that needed to be performed. The worker noted that he received his work assignments from the firm's full-time ranch hand (co-contractor). The worker and the other ranch hand determined the methods by which the assignments were performed. The worker noted that the other ranch hand would be contacted if any problems or issues arose; the firm indicated that it would be contacted. There were no required reports. Both parties agreed that the worker worked set scheduled hours and days, part-time at the firm's ranch. There were no meetings. Only the worker noted that he was required to provide the services personally. The firm indicated that it would (or other contractor) hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided all the equipment, supplies and materials needed. The firm noted that the worker provided gloves, work boots, clothes, hand tools, etc. The worker indicated that he was paid an hourly rate; the firm indicated he was paid a contract labor rate (but had already indicated that there was no contract.) Both parties agreed that the worker had no other economic risk. Both also agreed that the worker did not establish 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. The relationship ended when the ranch was sold and the worker no longer needed.

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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. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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, that is, its ranch operation. The firm provided the worker with general instructions. Task assignments were provided by the firm's full-time ranch hand. Though there was some flexibility, the worker performed his services 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.

While the work relationship between the parties was only for a few months, during that time, the worker provided his services on a continuous basis, though part-time, 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. 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. In addition, the worker was paid 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. In this case, there were no benefits and there was no written agreement. The worker was engaged as a ranch hand and helper at the firm's ranch operation. He was not engaged in an independent business enterprise, but rather the various services performed by the worker were part of the necessary activities of the firm's ranch operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. In this case, the success or continuation of the ranch depended 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 operation, whether the right to direct and control is exercised or not.

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.