

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.15 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 a winery. The firm engaged the worker to perform harvesting services at the firm's place of business on a temporary seasonal basis. The firm provided the worker with the necessary training to complete assigned jobs. The firm assigned the worker services to perform based on the firm's business needs. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm determined the worker's work schedule. The firm did not require the worker to perform the services personally per the firm. The worker indicated being required to perform the services personally. The firm hired and paid substitutes or helpers as needed per the worker. The firm indicated N/A to hiring and paying substitutes or helpers.

The firm provided equipment, materials, and supplies per the worker, the firm indicated N/A to providing anything. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the products sold and mutually verbally agreed to the hourly wages paid to the worker for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker on a part-time seasonal basis as needed to perform harvesting services for the firm's business operation. The firm assigned the worker services to perform and provided the worker with the necessary training to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm determined the worker's work schedule based on the firm's business needs. The firm determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The worker performed the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided everything the worker needed in order to perform the services. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated there were verbal working relationship agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's place of business under the firm's business name on a regular and continuous part time as needed seasonal basis for a period of about 2 months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination 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 without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.