

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.16 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 farming business. The firm engaged the worker to perform various farming laborer services for the firm's farming business. The firm provided the worker with instructions on services needed to be performed. 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 worker's work schedule varied based on jobs, weather, and season. The worker was required to perform the services personally at the firm's farm location. The firm hired and paid substitutes or helpers if needed.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage by the day. The firm was paid through various farming resources. The firm determined the level of payment for the products and services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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 to perform services for the firm's farming business. The firm provided the worker with the necessary instructions on the services to perform and 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 firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the farm on a flexible variable schedule as needed. 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 to perform the assigned services. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage by the day and the firm received income through various farming resources. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the firm's farming 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 worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business operation. The worker personally performed services for the firm's business on a regular continuous as needed basis over a period of several months. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.

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 fur bearing animals and wildlife.

Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, fur bearing 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.

Under section 3121(a)(8)(B) of the Internal Revenue Code, with exceptions not material here, when the cash remuneration paid to an individual farm worker in a calendar year is \$150 or more, or the employer's expenditures for agricultural labor in the year equals or exceeds \$2,500, the income is subject to FICA. Section 3306(c)(1) of the Code provides in effect, that with exceptions not material here, remuneration paid to individuals for agricultural labor is not subject to FUTA taxes unless the agricultural labor is performed for a person who, during any calendar quarter in the calendar year or the preceding calendar year, paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or on each of some 20 days during the calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day, 10 or more individuals.

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