

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.17 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 payer is a horse and cattle farm. The worker is engaged by the farm to perform general farm tasks including cleaning stalls and tending to the animals. The farm reported the worker's remuneration on Forms 1099-MISC for 2013, 2014, and 2015.

The farm provides the worker with her work assignments and the methods by which to perform them. If problems or complaints occur, the worker contacts the farm for resolution. The worker is required to report the number of hours worked. Her routine is determined by the farm's directions. The worker performs her services on the farm's property. She is required to perform her services personally. If additional personnel are needed, the farm is responsible for hiring and compensating them.

The farm provides all supplies, equipment, materials, and the property. The worker does not incur expenses in the performance of her services. The farm pays the worker at an hourly rate. It does not cover her under workers' compensation. The worker did not indicate an investment in the farm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

The farm does not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker does not advertise her services or provide similar services for others during the same time period.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, any statement that the worker is an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker performs her services under the farm's direction. The farm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker's schedule is determined by the farm. She performs her services on the farm's property. 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. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for the farm on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the farm retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 farm pays the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the farm retains control over the financial aspects of the worker's services.

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, the worker performs her services on a continuing basis. She is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the farm's business. 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. Although the farm does not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the farm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the farm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.