

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.19 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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a farm that breeds and trains horses for sale. The worker was engaged to provide general maintenance, cleaning, varmint control, and surveillance services for the firm. The firm believes the worker was an independent contractor because he worked on a project by project basis with control over how he handled projects, where he purchased materials, what he purchased for materials (chemicals and paint for example), and when he performed his tasks. The firm reported the worker's earnings on a Form 1099-MISC.

The firm states they provided no training or instructions to the worker. The worker's assignments were discussed with him on a project by project basis. The firm states the worker determined how he performed his services and he was not required to submit reports to them. The firm states the worker personally performed his services 70% of the time on their premises and 30% of the time reviewing video footage from cameras from the worker's premises. The firm states the worker could bring helpers of his choice and the worker was responsible for paying these helpers.

The firm states they provided some cleaning supplies and paint to the worker in order to perform his services. The firm states the worker provided surveillance cameras, guns, ammunition, a truck, bait, and some paint. The firm states they reimbursed the worker for paint and chemicals/weed killer expenses. The firm states the worker was paid on a piece work basis and various rates of pay depending on the project. The firm believes the worker could incur a loss if his cameras, guns, and truck were damaged. The firm states the worker established the level of payment for services provided.

The worker provided similar services for others. The firm states the worker advertised his services on the internet on his own website. The firm states they and the worker had discussed their previous verbal agreement and the worker remembered, and then signed a contract restating terms and conditions of his status as an independent contractor. The firm provided a copy of this agreement which states it was executed on September 3, 2015 but would be effective from and after July 2, 2014. The worker could terminate the work relationship with 14 days' notice to the firm and the firm could terminate the work relationship at any time without either party incurring a liability.

Analysis

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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

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 was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment and the operation of their farm and wellbeing of their livestock.

In this investigation, we looked at whether the worker displayed characteristics of an independent contractor; such as the outpouring of money into a business offering those services to the public and the opportunity to incur a loss or realize a profit as a result of his services. The worker in this case did not have this. The worker advertises his own livestock business on the internet; however, these are not the services he performed for the firm. The services the worker performed for the firm were those of a farm laborer.

While the worker performed services on a project by project basis, this in and of itself does not make the worker an independent contractor as both employees and independent contractors can be engaged by a company when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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.

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 performed similar services for others; however, it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting oneself and be an employee of one or all of whom engages him.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

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, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was 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.

Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.