

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.20 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 in the care and boarding of horses business. The firm engaged the worker to perform horse care and barn cleaning and maintenance services for the firm's business operation. The firm assigned the worker daily tasks to perform and additional needed services verbally based on the firm's business needs. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm's designated manager regarding any problems or complaints for resolution. The firm allowed the worker to work on a flexible schedule basis between designated feeding times. The firm required the worker to perform the services personally at the firm's farm location. The firm provided substitutes or helpers if needed and paid them.

The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment. The worker did not incur any business expenses. The firm paid the worker a set amount per day which increased during the working relationship. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment 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 the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker indicated no similar services were performed for others while performing services for the firm. Both parties agreed the worker did no advertising as a business to the public. 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 horse care and barn cleaning and maintenance services for the firm's business operation. The firm assigned the worker daily chores to perform and verbally assigned additional services as needed based on the firm's business needs. The firm allowed the worker to perform the services on a flexible schedule basis between designated feeding times. The firm and worker determined the methods used 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's designated manager regarding problems or complaints for resolution. The firm required the worker to perform the services personally at the farm location. The firm provided substitutes or helpers as needed and paid them. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or incur any business expenses. The firm paid the worker a set amount per day and increased the worker's daily payments during the working relationship. The customers paid the firm. The firm determined the level of payment paid by the customers and paid to the worker for the services. 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 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 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 as a business to the public. The worker personally performed services for the firm's business operation at the firm's place of business on a regular and continuous basis over several years under the firm's business name.

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.

However, it is held that services performed by an employee of a company in connection with the racing of horses and exhibiting them at horse shows are not "agricultural labor" within the meaning of section 3121(g)(1) of the Federal Insurance Contributions Act and section 3306(k) of the Federal Unemployment Tax Act. This conclusion is also applicable for purposes of the Collection of Income Tax at Source on Wages (chapter 24, subtitle C of the Code). For further information regarding agricultural employees, you may wish obtain Publication 51, Agricultural Employer's Tax Guide.