

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.22 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 operating a family farm and the worker performs farm labor services at the farm. The firm provides on-the-job training as needed. The firm assigns the worker services to perform based on the business needs. The firm and worker determine the methods to use to perform the services. The firm requires the worker to contact the firm regarding any problems or complaints for resolution. The worker's daily routines vary based on the job assignments. The worker performs services at the farm and firm's shop. The firm requires the worker to perform the services personally. The firm hires and pays substitutes or helpers if needed.

The firm provides everything the worker needs to perform the services. The worker does not lease equipment or space. The worker does not incur any business expenses. The firm pays the worker an hourly wage plus provides the worker with housing and pays electric costs. The firm does not carry workers' compensation insurance. The firm determines the level of payment for the services. The worker cannot suffer any economic loss and has no financial risk.

There are no contracts between the firm and the worker. The firm states the worker does perform similar services for others and is not required to obtain the firm's prior approval. The worker indicated no similar services are being performed for others. Both the firm and worker agree the worker does no advertising to the public as being engaged in a business operation. Both parties agree the work relationship can be terminated at any time without incurring any liability.

The firm and firm partner began withholding taxes from the payments in tax year 2015. The services did not change.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker has control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services being performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker has no financial investment in a business and does not incur any business expenses. The firm has the business investment and control over profit and risk of loss with regard to the services the worker is performing for the firm's business. These facts evidence financial control by the firm over the services being performed by the worker.

There are no contracts between the firm and the worker. The firm indicates the worker does perform similar services for others and is 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 does no advertising as a business to the public. The worker has been performing services for the farming business under the business name at the farm on a regular continuous as needed basis over several years. Both the firm and worker retain the right to terminate the working relationship at any time without incurring any liability for termination.

We are aware that the firm and one of the firm partners under which payment has been issued has reclassified the worker to an employee in 2015 and the services are the same. We appreciate the firm and one of the firm partners coming into compliance with federal employment tax laws.

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.

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