

**SS-8 Determination—Determination for Public Inspection**

Occupation 01FRW.28 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 worker submitted a request for a determination of worker status in regard to services performed for the firm as a ranch hand. The work done by the worker included herding, feeding, and watering cattle and repairing fences. Additional information obtained from the firm evidences the work relationship began in December 2014 and continued into 2015. The determination will address both tax years as the firm issued the worker Form 1099-MISC for 2014 and 2015.

The firm's response stated its business is ranchers who hire for specific duties such as fence building, calving heifers/cows, sorting cows, branding, herding, and processing. The worker was engaged as a day worker whose job was to assist with the calving of heifers, processing of cows, and moving cows to different pastures. The firm believes the worker was an independent contractor as he agreed to perform certain tasks but had discretion over his time to complete the work. There was no written agreement between the parties; however, the parties had a verbal agreement in connection with services performed.

The firm stated that based on the worker's prior experience working with cattle it did not provide training to the worker. The firm contacted the worker, as needed, and he would receive a list of tasks to complete. He was assigned pastures and performed tasks based on his judgment. The firm's manager was contacted if problems or complaints arose. The firm's manager was responsible for problem resolution. The firm required the worker to provide verbal reports. The worker's routine consisted of checking in at the beginning of the day, receiving a list of tasks to complete, and leaving when completed. Services were performed at the firm's multiple locations. Meetings were not required. The worker was not required to personally perform services. The worker could have provided a substitute; however, he did not during the term of this work relationship. The worker could arrange an alternate time to perform the work. If the task was too large, the firm hired additional workers. It is not common for a day laborer to send someone in his stead; however, if that occurred, the firm would be notified. The worker stated his routine consisted of 7 am to 5 pm. The firm required him to personally perform services.

The firm stated it provided the typical equipment which consisted of a horse, saddle, and ATV. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the firm. The parties agreed to a fixed amount of pay for the calving season. In order to tide-over the worker, the firm paid him a fixed monthly rate of pay rather than paying him a lump sum at the end of the season. A drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker established the level of payment for the services provided. The worker stated he did not establish the level of payment for the services provided.

The work relationship could be terminated by either party without incurring liability or penalty. The worker did not perform similar services for others or advertise. The firm stated it is common for day laborers to let ranchers know via word-of-mouth advertising that they are available. The work relationship ended when the job was completed.

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## Analysis

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Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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, the firm's statement that the worker was an independent contractor pursuant to a verbal 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.

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. In this case, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments, required the worker to provide verbal reports, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's past work experience and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. In this case, the worker did not invest capital, assume business risks, or incur expenses. Based on the fixed monthly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.