

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.29 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 initiated the request for a determination of her work status as a farmhand and performing cleaning work in tax years 2012 through 2017 having received a Form 1099-MISC from the firm. The firm's businesses are described as home improvement/restoration (from disasters) and a personal farm. The worker was responsible for the horses and cattle and related farm duties, as well as, doing cleaning for the firm at it's customers' locations (mold, fire/smoke, etc.).

The firm's response was signed by the owner, a sole proprietorship. The firm described its business as a farm. The worker performed services as farm help – mowing the grass, feeding animals, and basic repairs.

According to the firm, no training or instructions were given to the worker. All work assignments were verbal, with the worker determining the methods by which the services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. There were no reports required of the worker. The worker's daily routine was to the feed animals and perform upkeep on the farm. The firm has two locations; the worker was doing whatever she thought needed to be done to keep up with things. The worker was required to perform the services personally.

The worker responded that she was given specific training and instructions as to what to do on the jobs; the job assignments came from the firm and his wife. The firm determined the methods by which the worker's services were performed; she concurred that any problems or complaints were directed to the firm for resolution. The worker provided verbal reports as to what was done and what remained, if not completed and the hours worked. The worker's services were rendered at the firm's house/farm and at customer locations for home improvements/restoration. The worker was not required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm did not indicate what the firm furnished as far as materials, tools, equipment, or supplies; but, replied that the worker provided a vehicle and miscellaneous tools and that the worker did not incur expenses. The worker was paid \$XXX/week plus housing. The firm did not carry workers' compensation insurance on the worker. The worker's risk for a financial loss and the establishment of payment for services was indicated as 'not applicable'.

The worker stated the firm provided everything needed to do either job. The worker furnished nothing; she did not did not lease equipment, space, or a facility, and did not incur expenses in the performance of the job. On occasion she would purchase cleaning supplies but provided a receipt to teh firm and was reimbursed. The worker was paid an hourly wage for the cleaning services as part of restoration/improvement business and salary for work pertaining to the farm animals. The customers paid the firm. The worker acknowledged that she was not covered under the firm's workers' compensation insurance policy. The worker indicated that she was not at risk for a financial loss in this work relationship unless injured/incurred medical expenses. The firm established the level of payment for services provided or products/services sold.

Both parties concurred that benefits such as health insurance, sick pay, paid holidays, personal days, and etc. were not available to the worker; however, the worker indicated that her check sometimes included a Christmas bonus. Either party could terminate the work relationship without incurring a liability or penalty. The firm responded that the worker was performing same or similar services for others during the same time frame; the worker disagreed.

Analysis

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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training.

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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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 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 businesses.

CONCLUSION

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.