

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

Occupation

03MIS Miscellaneous Laborers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

**For IRS Use Only:****Facts of Case**

The worker submitted a request for a determination of worker status in regard to services performed for the payer from 2016 to 2018 as a farm foreman. The work done included growing, cutting, raking, and baling hay; feeding hay to cattle on a daily basis; building and repairing the payer's fencing; walking the payer's dog, taking out the trash, and cutting firewood for the fireplace; taking the owner to work and picking him up; landscaping and property maintenance of the payer's home; etc. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC.

The payer's response states it is a working family farm which raises cattle. The worker was engaged to bale hay and perform miscellaneous farm work. The worker was classified as an independent contractor as he knew the projects and work that needed to be done. The worker used his own knowledge and experience related to the best time to complete work. There was no written agreement between the parties.

The payer stated it did not train or instruct the worker. The weather, with the payer and worker, determined the methods by which assignments were performed. The payer was contacted and assumed responsibility for problem resolution. Reports included a log of work completed. The worker's daily routine was to work until the project was completed. Services were performed at the payer's premises. The worker met with the payer as needed. The payer ultimately hired and paid substitutes or helpers. The worker stated the payer instructed him to take care of the farm and to perform whatever was assigned. Work assignments were given at the morning meeting. The payer determined the methods by which assignments were performed and assumed responsibility for problem resolution. Reports included time sheets which documented the hours worked and the services performed. Services were performed on a regularly scheduled basis, i.e. 7:30 am to 4 pm daily. The payer required he personally perform services.

The payer stated it provided the farm equipment and materials to complete projects. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the payer. The payer paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The payer did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The worker stated the payer established the level of payment for the services provided.

The payer stated it is unknown if the worker performed similar services for others. There was no agreement prohibiting competition between the parties. The worker did not advertise. The work relationship ended when the worker quit. The worker stated the benefit of paid vacations was made available to him. The work relationship could be terminated by either party without incurring liability or penalty. He did not perform similar services for others or advertise. There was no agreement prohibiting competition between the parties. The payer represented him as its farm manager to its customers. Services were performed under the payer's business name. The work relationship ended when he quit due to the worker classification issue.

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## Analysis

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, a statement that a worker is an independent contractor pursuant to a written or 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation 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 payer's business operations. The payer provided work assignments, required the worker to report on daily services performed, and assumed responsibility for problem resolution. These facts evidence the payer retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's past work experience and work ethic the payer may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the payer retained the right to do so if needed.

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 payer 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 payer 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. In this case, the worker did not invest capital or assume business risks. 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. As acknowledged by the payer, the worker did not incur economic loss or financial risk. Based on the hourly 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 payer's business needs. 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 payer 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 payer can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.