

# SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.16 MiscLaborServices	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 business of sorting and dismantling pallets as well as operates a farm. The worker was engaged to repair the pallets and to help take care of the firm's cattle. He received a Form 1099-MISC for his services in 2013 and 2014, though in 2014 it was issued under the sole proprietor's SSN. There was no written agreement.

Both the firm and the worker agreed that the worker was given instructions on what to do; the worker added that sometimes the owner worked with him. Both parties agreed that the firm gave the worker his job assignments. However, each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm's owner would be contacted if any problems or issues arose. No reports were required. Both also agreed that the worker worked around his school hours; he worked mostly on his days off and Saturdays. Both agreed that he only worked at the firm's locations. The firm noted that the worker was to provide the services personally.

The worker noted that the firm provided the skid steer loader, hammer, weed eater, and tape measure; he provided only his labor. The firm noted that it provided only pliers and a crowbar; the worker provided a hammer and pliers. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. Both agreed that the customer paid the firm and that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker quit.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm provided the worker with at least initial instructions as well as his assigned duties such as sorting pallets or helping with farm chores. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. It is acknowledged that the worker worked when available and as needed; understandable as he was a student. He did provide his services on a continuous basis throughout the time period involved. 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.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. The worker simply received an hourly rate of pay and had no other economic risk. 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. The firm had the investment in either the trucking business or farm operations.

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. There were no benefits and there was no written agreement. In this case, the worker provided needed services to the firm on a part-time basis.

There is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods if the necessary direction and control the firm had over the worker existed when the worker worked part-time.

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.