

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

Occupation 03MIS.57 MiscLaborService	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**

Information provided indicated the firm a cattle ranch. The worker performed services as a ranch hand in tax years 2014 and 2015. The firm reported the income on Form 1099-MISC for both tax years. The firm indicated the worker performed services as a general laborer, doing fencing, moving hay, doing chores when the owner was away etc. The firm indicated there were no set hours, has projects were completed, others were given. The firm indicated the worker set his own hours. Services were performed on the firm’s ranch, which encompasses many miles of land. Work assignments were given verbally from the firm. The firm resolved any issues, dependent on the severity of the problem. The firm indicated they provided the truck to feed if doing chores while the owner was away. The worker was paid by the hour. He provided his own hand tools. Either party could terminate the work relationship without incurring a penalty or liability. The firm did provide copies of the hand written pages the worker provided that recorded the hours worked, days worked and what was completed. The firm indicated the worker quit.

The worker indicated he performed services for this firm at the same time he worked for her father on his ranch. He was paid by separately by both ranches. The worker indicated he performed services five days a week. He built fences and fed and took care of cattle. No training was required he was already experienced. The owner would call the worker and tell him what needed to be done. He would arrive at seven am, feed cattle and tend to the ranch, got done at five. All services were performed on ranch premises. He was required to perform his services personally. He stated the firm provided the truck, gas, equipment and tools. He was paid by the hour. Either could terminate the work relationship without incurring a penalty or liability. He indicated he was represented as the ranch hand for both ranches. He stated he quit because the firm would not withhold taxes from wages.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

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.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

**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.

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.

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## Analysis

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Documentation provided by the firm shows the worker performed services on a daily, continuing basis.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The firm provided records of the daily reports stating what projects had been worked on and the hours worked.

Payment by the hour, week, or month generally points to an employer-employee relationship. Both parties agreed the worker was paid by the hour. Documents provided by the firm indicated he was paid Eleven dollars per hour.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## 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.