

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.155 Laborer/Trades	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 was in the process of building a vineyard and gardens, named [REDACTED]. The worker had been retained by the firm as a laborer. The firm reported the income in 2015 on Form 1099-MISC. No pay document was issued for 2014 as it was under six hundred dollars. The firm stated they were in the process of building a vineyard and gardens and they often needed additional help on individual projects involved. They relied entirely upon [REDACTED] find people needing part time or short term jobs to get by on spurts of income for short tasks. The firm indicated they defined the work to be done and defined certain parameters, thus the hired individuals worked at their own pace, when they had the time available. The made sure they had the experience necessary to do the work efficiently. Some needed to be watched more closely than others. Some worked on their days off from their regular jobs, or only on weekends. This worker was trained to do pruning in their vineyard and instructed her how much it usually costs to prune the vineyard, which she thought was reasonable. They proceeded on that basis. She brought her significant other out to the farm to help, insisting they worked as a team. They did not pay him anything, they paid her, and she paid him. They both understood no taxes were being withheld.

The worker indicated she was originally hired for a two day period, but the work continued. Specific instructions were given for each assignment. These came via text, phone calls or verbally from the firm. The owner of the firm resolved all issues. She stated she worked as needed, several days a week usually three to five hours per week. She had no authority to hire. The firm provided all tools needed. She was paid by the hour. The worker stated the firm withheld a total of thirty-two dollars from one pay check to cover fire damage to trees, plus hourly pay of at least two employees. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated [REDACTED] and she did work there together. However, she went into the hospital in September of 2015. (That was the first of two weeks they had been "laid off") [REDACTED] continued to work for the firm and worked the entire two weeks of lay off. Documentation was provided showing instructions given as to the work needed to be performed, days/hours they would or would not be working between the parties (due to rain, or the firm's equipment stuck in the mud/breakdown etc., discussions of payments, verification of employment etc.

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

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.

Analysis

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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.