

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

Occupation

04MAN Ranch Manager

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 initiated the request for a determination of his work status as a ranch manager/foreman in tax year 2018, for which he received Form 1099-MISC. In this capacity he performed general upkeep of the buildings on the property, mowing, and the feeding and care of the animals. He supervised other employees and sub-contractors and reported to the firm's owner. The firm's business is described as a private hunting ranch.

The firm's response, signed by the owner, describes the firm's business as a ranching/farm operation raising chickens, goats, white tail deer, and exotic animals. The ranch is owned by an 'absentee owner'. The owner had never met the worker and was not familiar with him; but, with a friend's referral he hired the worker on a temporary trial basis to see if both parties felt it could be a good fit. The worker's schedule was his own, and he was responsible for the general well being of the animals in the owner's absence.

The worker responded that no training and instructions were necessary since he was hired for his experience. The worker was given the job assignments in person from the firm's owner who came to the ranch at least once a week. The worker determined the methods by which he performed his job assignments. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's daily routine was to check on the sub-contractors working on the ranch, connect with other employees, feed the animals, and work on anything that needed attention on the ranch or as directed by the owner. During this time there was a crew rebuilding a fence and another constructing a lake on the property. The worker's services were rendered on the ranch full time. The worker stated that as part of the arrangement her lived on the property. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, no specific training and instructions and no job assignments were given to the worker. The worker determined the methods by which the services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered on the ranch; and, the worker could come and go as he pleased as long as the animals were fed and cared for. The worker was required to perform the services personally.

The worker stated that in addition to housing which included utilities, TV, and Internet, the firm provided all equipment, materials, supplies, feed, fuel, a credit card, and a ranch truck. The worker furnished nothing and did not lease equipment, space, or a facility. The firm paid the worker a salary regardless of the hours worked. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship and he did not establish level of payment for services provided or products sold.

The firm response indicates the firm provided feed for the animals and truck to get the food to the feeders. The worker furnished personal tools and a truck. The worker did not lease equipment, space, or a facility. The firm paid the worker \$XXX/month during the trial period. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship unless he damaged some equipment. The worker established the level of payment for services provided or products sold.

There worker stated there were no benefits extended to the worker other than housing, utilities and Internet, a ranch truck and fuel. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. During this time another worker left to pursue another job opportunity and the worker assumed the additional duties. There was no additional compensation and although the worker repeatedly asked the firm to hire a replacement, the worker continued to perform all tasks, until he was fired. The worker stated there was never any discussion that this job was on a trial basis.

The firm indicated no benefits extended to the worker since this was a trial basis. Either party could terminate the work relationship without incurring a liability or penalty. It was unknown to the firm if worker was/was not performing same or similar services for others during the same time frame; but, he was free to do so. The work relationship was not a good fit; therefore, the firm terminated the work relationship. The firm provided copies of the checks indicating this was contract labor as well as a copy of Form W-9.

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## Analysis

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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.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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.

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 and that its contractual obligations were met. 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 business.

## CONCLUSION

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.

Please see [www.irs.gov](http://www.irs.gov) for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.