

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

Occupation 05PHC Horse Groomer	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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, a seasonal groom for the Firm, a horse training stable, submitted Form SS-8 related to services she provided the Firm in 2018 and 2019. The Worker attached a copy of Form 1099-MISC the Firm issued her for TY2018. The Worker didn't attach a copy of Form 1099-MISC issued by the Firm for TY2019; rather, she attached copies of checks made out to her and appearing to come from the Firm during 2019. The Worker believes the Firm erroneously issued her the Form 1099-MISC and that she was the Firm's employee because her weekly wage didn't fluctuate, regardless of hours worked, and the Firm controlled what, when, and how tasks were to be performed.

The Firm submitted a responsive Form SS-8 with no attachments and believes the Worker was an independent contractor because the Firm hired her for seasonal work with no set hours and no formal instruction. Although the Firm states the Worker didn't perform services for the Firm in any capacity before providing the services that are the subject of this determination, the Worker states she worked for one week in the Firm's separate tack shop. The Firm and Worker agree the Worker didn't perform services for the Firm under a written agreement.

**BEHAVIORAL CONTROL:**

According to the Firm, it didn't provide specific training or instruction to the Worker but instead assigned her a "scope of responsibility"; the Worker states the Firm gave her ad hoc verbal instruction as required. The parties generally agree the Firm gave the Worker her assignments. While the Firm maintains the Worker determined the methods by which she performed the Firm's assignments, the Worker states the Firm determined those methods. The parties agree the Worker was required to contact the Firm if problems or complaints arose and that the Firm was responsible for the resolution of those issues.

The parties agree the Firm required the Worker to provide verbal status reports. The Firm states, without providing details, that it didn't require the Worker to provide her services on a set schedule. In contrast, the Worker maintains her normal work hours were from 6:00 am to 7:00 pm, 7 days a week. It's not clear if the Worker means these times were the parameters within which she could do her assignments at the hours she chose, or if she means the Firm required her to work a 91-hour a week schedule.

The parties agree the Firm required the Worker to perform 100% of her services either at the Firm's premises or on location with the Firm at horse shows. The parties also agree the Firm required the Worker to personally provide services but didn't require the Worker to attend meetings.

**FINANCIAL:**

The parties generally agree the Firm provided all supplies, equipment, materials, and property needed for the Worker to perform services and that the Firm didn't reimburse any expenses the Worker may have incurred in working for the Firm. The parties also agree the Worker didn't lease equipment, space, or a facility. The parties agree the Firm paid the Worker a flat weekly wage of \$400.00; according to the Firm, the Worker also received "training on 1 horse and board on 2 horses." The parties agree customers paid the Firm, that the Worker wasn't allowed a drawing account for advances, and that the Firm didn't carry workers' compensation insurance on the Worker. The Firm states the Worker set the level of payment for the services provided or products sold, while the Worker maintains the Firm did.

In terms of any economic loss or financial risk, beyond loss of wages, the Worker could incur providing services to the Firm, the Firm submits she could potentially be liable for any mishandling of horses. On the same question, the Worker maintains she could incur economic loss or financial risk through injury, damage to her clothing, and no overtime compensation.

**RELATIONSHIP OF THE WORKER AND FIRM:**

The parties generally agree on the following facts:

- There were no non-compete agreements between them.
- The Worker wasn't a union member.
- The Firm didn't make any benefits available to the Worker.
- Their working relationship could be terminated at any time by either party without liability or penalty.

The Firm states it represented the Worker to customers as "contractor or seasonal groom," while the Worker states the Firm represented her as "employee of [ABC] Stables." According to the Firm, the Worker performed similar services for others during the time period at issue in this case but wasn't required to seek the Firm's approval to do so.\* The Worker maintains she didn't provide similar services to others.

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## Analysis

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It's critical for workers and those who hire them to understand that if their circumstances and behavior indicate an employer-employee relationship exists, any oral or written agreement, contract, intent, or understanding between the parties that designates the worker as an independent contractor must be disregarded when we determine worker classification for federal employment tax purposes. In this context, under the required common law standard, the actual working relationship between the parties is what matters. IRC 31.3121(d)-1(c). And this same common law standard is applied to part time, seasonal, and temporary workers.

An employer-employee relationship generally exists when the firm the worker provides services to has the right to control and direct (1) what the worker does and (2) how the worker does it. It isn't necessary for the firm to actively direct or control the worker, only for it to have the right to do so.

A worker who is required to comply with a firm's instructions about when, where, and how they are to work is ordinarily an employee. This control factor is present if the firm receiving a worker's services has the right to require the worker's compliance with instructions. Some workers may not receive instructions because they're already highly proficient and conscientious workers or because the tasks assigned are simple or familiar to them. Here, rather than specific training or instruction the Firm gave the Worker assignments in the form of a "scope of responsibility" and allowed the Worker to determine how to carry out those assignments. The key word is "allowed"; where a firm has the right to "allow", the firm generally has the right to not allow. Here, the Firm had the legal right to determine how the Worker performed her assignments but chose not to do so -- perhaps because it had confidence in the Worker's experience and work ethic.

If a firm requires a worker's services to be rendered personally, as the Firm required in this case, it's reasonable to presume the firm is interested in the methods used to accomplish the work as well as in the results. In addition to being required to provide her services personally, the Firm required the Worker to perform them either on the Firm's premises or at horse shows for the Firm's purposes. And the Worker performed those services on a regular schedule, between 6:00 am and 7:00 pm, 7 days a week. Even if these were merely bookend times within which the Worker performed services, when the nature of an occupation makes fixed hours impractical, a firm's requirement that workers be on the job between certain times is an element of control -- even when the workers are allowed to choose the specific hours within those parameters.

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 -- something neither party asserts. 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. Here, the Worker was paid a fixed weekly salary.

The fact that a firm furnishes significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Similarly, the lack of significant investment by a worker in facilities or equipment used in performing services for another indicates dependence on the firm and, accordingly, the existence of an employer-employee relationship. The term "significant investment" doesn't 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's unlikely the worker had an investment in facilities.

A worker who can't realize a profit or suffer a loss as a result of providing their services is generally an employee. "Profit or loss" implies the use of capital by the worker in an independent business of their own. The risk that a worker won't receive payment for his or her services, however, is common to both independent contractors and employees and isn't sufficient economic risk to support treating the worker as an independent contractor. If a worker loses payment from a firm 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've 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, business reputation, and customer satisfaction. The Worker wasn't operating a separate and distinct horse grooming business; the Worker didn't invest capital or assume business risks, and therefore, didn't have the opportunity to realize a profit or incur a loss as a result of the services provided. In this case, the Worker wasn't engaged in an independent enterprise; the services she provided were a necessary element of the Firm's operation as an equestrian training stable.

As noted above, common law factors are considered when examining worker classification issues. Based on the facts presented and researched, this analysis concludes the Firm had the right to exercise direction and control over the Worker to the degree necessary to establish the Worker was the Firm's common law employee during the relevant time period, and not an independent contractor operating a trade or business. The Worker is classified as an employee of the Firm for employment tax purposes.

The Firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.