

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.4 Farm/RanchWorker	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 a poultry farm that engaged the worker to care and maintain the chicken houses. She received a Form 1099-MISC for her services in 2007 through 2014; she also provided similar services in 2003 through 2006 but was paid by different (but likely related) entities/individuals. There was no written agreement.

The firm gave the worker instructions, even if just initially, in the removal, feeding and disposal of chickens as well as how to handle and repair equipment in the chicken houses; the firm indicated that information was only provided if needed and requested by the worker. The firm gave the worker her assignments verbally and directed her activities. Both agreed that the firm determined the methods by which the assignments were performed with the firm including that the worker determined the methods as well. Both agreed that the firm would be contacted if any issues or problems arose. Only the worker indicated that she gave verbal reports. The worker noted that it was a requirement that she lived on site - she fed, watered, checked temperatures and picked up sick/dead birds. The firm noted that she worked 1-2 hours a day, picking up dead chicks, checking equipment and making repairs with help. Both parties agreed that all the work was performed on the firm's premises. Both agreed that the worker was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided all the necessary equipment, tools, supplies and materials. Both also agreed that the worker was paid a weekly income. Each indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits (although the worker mentioned paid vacations) and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others (she noted it was a full-time job.) The relationship has ended.

Analysis

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. 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.

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 instructions and her assigned duties. She performed her services according to the firm's schedule, providing the needed routine work such as daily feeding and watering of the chickens, as well as maintaining the chicken houses. In fact, she was provided with on-site housing for the firm's convenience of having the worker available when needed. 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.

In addition, the worker provided her 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 received a weekly pay amount along with housing at the firm's premises as part of the job. She 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. 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.

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. According to the worker, she received paid vacation time. There was no written agreement. In this case, the worker was engaged to care for chickens on the firm's poultry farm. She was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the firm's farm operations. 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.

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.

Section 3121(g)(1) of the Internal Revenue Code, relating to the FICA, provides that the term "agricultural labor" includes all services performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife. Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses, and other similar structures as are used primarily for the raising of agricultural or horticultural commodities.

Therefore, in this case, the employer of the worker, is liable for FICA and FUTA taxes for the worker, absent the application of the foregoing limited exceptions (See Pub. 51.) Whenever the employer pays the employee's tax for federal income, social security and Medicare in lieu of collecting it from the employee, this amount must be included in the employee's wages for income tax purposes. However, they are not counted as social security and Medicare wages or as federal unemployment (FUTA) wages. For further information regarding agricultural employees, please obtain Publication 51, Agricultural Employer's Tax Guide.