

# SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.12 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 horse farm business. The firm engaged the worker to perform barn and horse chores under a verbal working relationship agreement. The firm provided the worker with initial job orientation training. The firm assigned the worker services to perform based on business needs. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker performed the services on a flexible schedule basis. The firm required the worker to perform the services personally at the firm's barn location. No substitutes or helpers were hired or paid during the working relationship per the firm. The worker indicated the firm hired and paid substitutes or helpers if needed.

The firm provided all equipment, materials, and supplies. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a piecework basis per the firm, the worker indicated paid hourly wage. The customers paid the firm. The firm determined the level of payment for the services and products sold per the worker. The firm indicated the worker determined this issue. The firm did not carry worker's compensation insurance. Both the firm and worker agreed the worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm indicated there was a verbal working relationship agreement. The worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker to perform part-time barn and horse chores at the firm's farm location. The firm provided the worker with initial job orientation training and job completion perimeters and allowed the worker to perform the services on a flexible schedule. The firm assigned the worker services to perform based on the firm's business needs. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment and did not incur any business expenses. The firm paid the worker and the customers paid the firm. The firm determined the level of payment for the services and products paid by the customers and agreed to the payment made to the worker for performing services. The worker could not suffer any economic loss due to on-going significant business investments being made. The worker did not have control over profit and loss with regard to the costs associated with the operation of farm business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement entered into. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker had other jobs while performing services for the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business. The worker personally performed part-time services for the firm's business at the firm's place of business over a period of about 6 months. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

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 fur bearing animals and wildlife. Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, fur bearing 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.

Under section 3121(a)(8)(B) of the Internal Revenue Code, with exceptions not material here, when the cash remuneration paid to an individual farm worker in a calendar year is \$150 or more, or the employer's expenditures for agricultural labor in the year equals or exceeds \$2,500, the income is subject to FICA. Section 3306(c)(1) of the Code provides in effect, that with exceptions not material here, remuneration paid to individuals for agricultural labor is not subject to FUTA taxes unless the agricultural labor is performed for a person who, during any calendar quarter in the calendar year or the preceding calendar year, paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or on each of some 20 days during the calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day, 10 or more individuals.

For further information regarding agricultural employees, you may wish obtain Publication 51, Agricultural Employer's Tax Guide.