

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.18 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 farm is in the business of breeding, grooming, and selling race horses. The worker was engaged by the farm to feed and clean the horses, and other tasks as needed. The farm did not withhold taxes from the worker's remuneration in 2010 through 2014.

Information from the parties supports that the farm provided the worker with instructions specific to the individual needs of certain horses. Changes in the horses' routines were communicated to the worker. If problems or complaints occurred, the worker contacted the farm manager for resolution. The worker and the farm manager determined the methods by which the worker performed her services. Only the feeding times for the horses were done at set times. The cleaning of the stalls was done at times set by the worker. All services were performed on the farm. The worker was not required to perform her services personally, but she had no helpers.

The farm provided the horse feed, pitch forks, scoops, and the property. The worker provided her own clothing and footwear. The farm paid the worker at an hourly rate. It did not cover her under workers' compensation. Neither party indicated an investment by the worker in the farm or a related business. Or than a risk of injury, there is no indication that the worker could incur a financial loss beyond the normal loss of compensation..

The farm did not make benefits available to the worker. It did not prohibit the worker from providing similar services for others during the same time period. There is no indication that the worker advertised her services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the farm stated that it terminated the work relationship due to the worker's failure to provide the services.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the farm provided specific instructions relative to individual horses. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Instructing a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker followed the feeding schedule set by the farm. She provided her services on the farm. 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. The farm stated that the worker was not required to perform her services personally, but there is no indication that she could engage and pay others to perform services for the farm on her behalf. 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. These facts show that the farm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker provided her own clothing and footwear. 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. The farm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the farm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She was not engaged in an independent enterprise, but rather the horse feeding, attending, and cleaning services performed by the worker were a necessary and integral part of the farm's business. 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. The worker could have provided similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the farm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the farm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the farm 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.