

Employer –Employee Relationships

Prepared by Rob Holcomb, EA, Extension Educator
University of Minnesota Extension
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Farm managers need to be aware of differences between treating farm workers as employees or independent contractors. The motivation for a farm manager to treat a worker as an independent contractor is that the farmer can avoid the need to issue a W-2 and also does not have to deal with employment taxes. The key issue in this discussion is, “what activities make workers employees?”

Generally a worker who performs services for you is your employee if you have the right to control what is done and how it will be done. That is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

In general you are an employer of farm workers if your employees:

- Raise or harvest agricultural or horticultural crops on your farm (including the raising of feeding of livestock).
- Work in connection with the operation, management, conservation, improvement, or maintenance of your farm and its tools or equipment.
- Provide services relating to salvaging timber, or clearing land of brush and other debris left by hurricane (also known as hurricane labor).
- Handle, process, or package any agricultural or horticultural commodity if you produced over half of the commodity (for a group of up to 20 unincorporated operators, all of the commodity).
- Do work for you related to cotton ginning, turpentine, gum resin products, or the operation and maintenance of irrigation facilities.¹

The IRS has developed a list of factors that are used as an aid in determining whether an individual is an employee under the common law rules. These factors have been narrowed down to three criteria outlined below:

- A. Behavior Control²
 - a. **Instructions** - relating to when, where and how to accomplish the task; where to purchase the necessary supplies
 - b. **Training** - as regards specific procedures to be followed, and methods to be used in completing the task.
- B. Financial Control³

¹ Publication 51 (Circular A), Agricultural Employers Tax Guide, 2011. p. 8.

² Schwartau, Chuck. Farm Labor Laws and Regulations in Minnesota – 2009. pp. 2-3

- a. **Significant Investment** - does the worker own normal tools and equipment of their trade or profession? Do they maintain a separate office and are they responsible for all expenses of that office?
 - b. **Unreimbursed Expenses** - the presence of unreimbursed expenses suggests independence/or possible independent contractor status.
 - c. **Services Available to the Open Market** - does the worker advertise and or maintain a visible business location?
 - d. **Method of Payment** - is there a flat fee or a per job payment contract? Workers paid on an hourly, daily, weekly or monthly basis tend to indicate an employer – employee relationship.
 - e. **Opportunity for Profit or Loss** - the ability to sustain a financial loss is one of the strongest indicators of independence.
- C. Relationship of the Parties⁴
- a. **Intent of the Parties/Written Contracts** - usually supports position of independence.
 - b. **Employee Benefits** - providing a worker with benefits is generally evidence of employer – employee relationship
 - c. **Discharge/Termination** - can the worker be terminated before the task is completed without becoming liable for nonperformance under a contract or agreement?
 - d. **Regular Business Activity** - are services performed as a key aspect of the regular business? If so, and employer – employee relationship may be indicated.

³ Schwartau, Chuck. Farm Labor Laws and Regulations in Minnesota – 2009. pp. 2-3

⁴ Ibid. pp. 2-3