

**SS-8 Determination—Determination for Public Inspection**Occupation  
02SAL Sales RepDetermination:  
☒ Employee ☐ Contractor

UILC

Third Party Communication:  
☒ None ☐ 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**

Information provided indicated the firm manufactures truck slides. The worker performed services as a sales representative in 2015. The firm reported the income on Form 1099-MISC, the worker felt he was an employee for the firm.

The firm stated the worker performed services as an outside sales representative. They indicated he made his own hours and had no direct supervision. The worker determined which dealers to visit. The firm determined the methods by which the assignments were performed. The firm indicated the worker provided call reports of the contacts he made, a sample of the reports was provided. The firm indicated there was no set routine. The worker determined his own appointments and routes the first six months of pay to be received would come out of commissions over time. The firm provided him with brochures and literature. He provided his own vehicle, tablet, computer, and paid for his own hotels, food and fuel. He was paid commissions one to two times a month. The customer paid the firm. The firm indicated the levels are determined by volume, the company had guidelines for those levels. The firm stated money was fronted based on sales volume towards commission and the worker did not meet those goals. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated he did perform similar services for others. The firm indicated the worker provided customer with a dealer credit application to be completed and sent in. They indicated the firm had approval of all orders submitted. They indicated they did determine the workers territory.

The worker agreed he was the [REDACTED] territory support representative for the firm. The worker indicated he completed a W-4 and I-9, received company property and supplies and was required to maintain a set schedule, follow guidelines and procedures in the employee handbook. He was given sales and marketing training courses. Work assignments were given via company e-mail and scheduled appointments. He reported to his immediate supervisor if there were any issues. He provided sales, marketing, mileage and expense reports. He indicated he performed services from nine am to five-thirty pm. Services were performed at customer locations. He was required to attend staff, sales, and marketing meetings. Reprimands and/or termination would occur if you did not attend. He agreed he was to perform the services personally. The worker indicated the firm provided a laptop, cell phone, office supplies, scanner, printer, and marketing materials. The worker indicated he used his car, until the firm was to provide one. The firm reimbursed for travel, fuel, mileage, office supplies and meals. He indicated he was paid on salary. He agreed the customer paid the firm. He stated the firm did carry workmen's compensation insurance. The worker indicated he received paid vacation and holidays. The worker indicated there was a non compete clause in the employee handbook which had to be signed. He was represented as a representative of the firm under the name [REDACTED]. He indicated he was laid off.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

---

## Analysis

---

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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. An at will employee is still an employee. The W completed a W-4 and I-9 form, received full company benefits, and followed the companies procedures as outlined in the employee manual. The worker completed the required probationary period as well as on going training, and yearly evaluations. The worker was paid on salary, with reimbursements for mileage etc, indicating no financial business investments in the services provided. All work was performed under the firm's business name, as a representative of the firm.