

SS-8 Determination—Determination for Public Inspection

Occupation Managers/Supervisors/Administrators	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

The firm operated a trucking business hauling water for the oil industry. The worker was engaged as an operations manager, whose duties included obtaining hauling contracts, management of drivers for the semis, overseeing the firm's operations, and providing for the upkeep/repairs of the firm's trucks and trailers. The firm indicated that it believed it had entered into a verbal business agreement with the worker's business regarding the services to be performed. The firm further indicated that the worker leased his own trucking equipment to the firm for use in its business operations. Neither party provided information to support these statements.

Due to his work experience, the worker did not receive specific training or instructions from the firm on how to perform his services. Work assignments were received by contacting customers to obtain hauling contracts for the firm. The firm determined the work methods by which to perform the services. The worker contacted the firm regarding problems that needed resolution. The worker provided forms as requested by the firm, (i.e. driver info). He was required to live in the state where he managed the firm's business operations, and he performed his services personally. Helpers were engaged by the firm, and paid by the firm for their services. The firm provided for the worker's residence, and the trucks, trailers, parts, and fuel needed to perform the services. The worker provided his own tools for maintenance and repairs on the firm's trucking equipment. The firm paid the worker on a salary basis. Customers paid the firm for services rendered. The worker incurred expenses for occasional meals or hotel stays for drivers. The firm reimbursed the worker for all expenses incurred in the performance of his services. The worker did not incur economic loss or financial risks related to the services he performed for the firm. The firm provided workers' compensation insurance coverage on the worker. The firm did not make employment benefits available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the workers' behavioral control of the work relationship. The worker followed the firm's work methods and routine in the performance of his services. The worker's services were performed personally at locations designated by the firm, using its trucking equipment, tools, and supplies. The worker represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investments, and the reputation of its business operations, and therefore retained behavioral control of the work relationship.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own; there was no information provided in this case to support that the worker operated his own business, or that he had a business agreement with the firm. There was no information provided in this case to support that the worker had a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business 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 common law principles, the worker shall be found to be an employee of the firm for federal employment tax purposes. For correction assistance, please visit www.irs.gov to obtain Publication 4341.