

**SS-8 Determination—Determination for Public Inspection**

Occupation 09CMA Couriers and Messengers	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 is in the trucking business. The firm engaged the worker to perform dispatching services for the firm's business operation. The firm provided the worker with business policy, procedures, and expectations training through a job introduction portion of a contractor agreement and orientation. The worker obtained jobs through various resources used in the trucking industry. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding resolution of problems or complaints. The firm determined the hours of operation. The worker performed services at the firm's place of business and from home. The firm required the worker to perform the services personally.

The firm provided a computer, cell phone, and materials needed by the worker to perform services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm determined the level of payment for the services. The firm did not carry workers' compensation insurance. The firm indicated the workers' economic loss and financial risk were loss or damages of equipment. The worker indicated not receiving last pay check or escrow paid towards insurance costs to this issue.

There was a signed contract provided indicating the worker to be an independent contractor. The agreement addressed the business policies, procedures, and expectations. The contract was split up into sections of introduction, definitions of contractors status, contractor policies, standards of conduct, attendance/punctuality, wage/salary policies, and procedures for handling complaints. The worker did have another unrelated job and was not required to obtain the firm's prior approval. The firm did not know if the worker advertised as a business to the public. The firm referred to the worker as a contractor under the firm's business name. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability unless the firm's items were not returned when termination occurred.

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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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The issue that the firm paid the worker on a commission basis would not make the worker to be an independent contractor. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed contract provided between the firm and the worker that addressed the autonomy of the working relationship and indicated the worker to be a independent contractor. Based on the details in the contract as well as the autonomy it has been determined that the worker was an employee when performing services due to direction and control over the worker and services performed. The issue that the worker also worked another job would not make the worker to be an independent contractor. 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 personally performed services under the firm's business name on a regular and continuous basis over several years. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.