

# 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 worker submitted a request for a determination of worker status in regard to services performed for the firm from April 2018 to March 2020 as a mail courier. The firm issued the worker Form 1099-MISC for 2018, 2019, and 2020. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error. There was no written agreement between the parties. The worker feels they were misclassified as their previous employer for the same job classified them as an employee.

The firm's response states it is a USPS contractor. The work provided by the worker was delivering mail. The worker was requested to deliver along a designated mail route to various addresses. The firm states that the worker made their own schedule and conducted other business interests during their hours performing for the firm.

The firm states that no training was required for the worker. The worker would deliver the firm's packages at their availability according to their schedule. The firm states that the worker determined the methods by which job assignments were performed. The worker was required to contact the firm's owner if there were any issues or problems that they encountered during their job duties. The worker was not required to provide the firm with any reports. The worker would provide services for 3 to 4 hours daily at their discretion. The firm states that services for the firm were provided at the post office and out at delivery. There were no meetings required of the worker. The worker was required by the firm to provide services personally. If helpers or substitutes were required, the firm's owner was responsible for hiring and paying them. The worker states that the firm did not provide training but that they assisted their new boss with procedures. The worker states that they were required to report only to the firm's owner. Work was prepared for the worker prior to their arrival at the post office, and the post office's standard policies determined the methods by which jobs were performed. The worker was required to report any problems to the firm owner who handled problem resolution. No reports were required of the worker. The worker arrived at the post office to case the mail and prepare it for delivery, load their car, then deliver to various addresses upon a designated route. The worker would then return to the post office to return keys and the scanner. Time off was dictated by how many deliveries were necessary. The worker would spend approximately 2 hours at the post office and 2 to 4 hours on their delivery route, depending upon mail load. There were no meetings required and the worker was required to perform services personally. The firm owner was responsible for hiring and paying any helpers.

The firm states that the worker nor the firm provided anything for the job. The worker did not lease space, facilities, or equipment. The worker had no expenses. The worker was paid an hourly wage by the firm up until the firm felt the worker was dishonest with their hour reporting, then switching the worker to a salary. The worker did not have access to a drawing account for advances. Customers would pay the firm. The firm did not have worker's compensation insurance on the worker. The worker faced no economic loss or financial risk. The firm established the level of payment for all services rendered. The worker states that they supplied gas and their vehicle for the route, car insurance, tires, tools and tape. The post office supplied postal supplies, keys, a scanner, and postal slips. The worker did not have to lease anything for their job. The worker also had an additional expense of winter weather gear for outdoor delivery and a higher vehicle insurance rate. The worker was paid a salary by the firm. The worker was paid an advance one time when they were short on funds. The post office whom the firm worked for took care of all customer payments. The worker's financial risk involved wear and tear on their vehicle, tires, gas, and the possibility of injury on the job.

The firm provided birthday and Christmas bonuses as benefits, in addition to 2 paid days off a month. The relationship could be terminated by either party without liability or penalty. The firm states that the worker performed similar services for other firms during the course of the work relationship. The firm states the worker conducted their own business tasks while performing services for the firm. The worker was not a member of a union. The worker did not advertise their services to the public. The firm states that they represented the worker as a sub-contractor to customers. The work relationship ended when there was an altercation at the post office. The worker states that they were offered a variety of benefits but that they were revoked. The worker states that they did not offer similar services for other firms while working for the firm. There were no non-compete agreements in place between the parties. The worker was not a member of a union and did not advertise services to the public. The worker states that most customers of the firm believed they were an employee of the postal services, as they were sub-contracted. The worker states that their position was terminated by the firm owner after the worker reported the firm owner to the labor board for unprofessional conduct.

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## Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation as a delivery service. The firm provided work assignments by virtue of the customers served and mail deliveries assigned and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks beyond transportation costs. 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. Based on the initial hourly rate of pay arrangement and then the agreed-upon monthly salary, the worker could not realize a profit or incur a loss.

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 the firm's business of delivery. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

In addition to the above facts, previous IRS letter rulings (IRS letter Ruling 8809035, and additionally IRS Letter Ruling 8848009, Aug. 25, 1988 and IRS Letter Ruling 9009032, Dec. 4, 1989) have determined that "An individual who contracts with the U.S. Postal Service for the delivery of mail is an independent contractor, and the individuals he hires are his employees."

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.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.