

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

Occupation 09CME.1 Crew Member	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 business of delivering bread to various stores, schools and stores. The individual provided his services as a merchandiser for the firm for the years 2011 through 2013 and the monies he received for the services he provided were reported on Forms 1099-MISC.

The worker was hired by the firm after being recommended by a family member. He received all his assignments directly from the firm. The firm provided the worker with instructions regarding all his assignments and work locations. The worker's responsibilities included travelling with the firm on the firm's truck and meeting at various locations for the purpose of unloading and stocking products. Prior to delivery of the products, the worker travelled to the designated store to organize shelves and remove any outdated products. He provided these services four days per week starting at 4:30 AM. These services were provided on the firm's clients' premises and the worker was required to provide these services personally. If problems or complaints arose as a result of the worker's services, the firm was responsible for problem resolution. If substitutes or helpers were needed, it was the firm's responsibility to hire and pay them. Although the firm stated the worker determined his own hours and methods, he provided these services for the firm on the firm's clients' premises during hours which were mutually determined.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; the truck, equipment and products. The worker stated he did not need to purchase or lease any significant equipment used in providing his services and he did not incur significant business expenses. The firm determined the level of payment and the worker received a daily rate with extra pay for additional time.

The worker ascertained that he did not provide similar services for others and did not advertise his services to maintain a business of a similar nature while providing his services for the firm. The worker provided his services under the firm's business name and he stated he was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker resigned.

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**Analysis**

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The worker received instruction regarding the services he provided. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker.

The worker rendered his services personally. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were performed under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The rate of pay was determined by the firm and he was compensated on a daily rate.

He did not have any financial investment in a business related to the services performed and could not have incurred a business profit or business loss in the performance of his services he provided to the firm. The worker provided his services under the firm's name, and his work was integrated into the firm's business and hours of operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes