

# SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Driver	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 providing executive and limo services. The worker was engaged as a driver. The worker received a 2016 Form 1099-MISC for his services; he also received Form 1099-MISC in previous years as well. There was no written agreement.

Both the firm and the worker agreed that there was no training or instructions. The firm noted that the worker received his work assignments via the phone; the worker noted that the firm created the schedule, assigned the job and client's itinerary with specific instructions. Each party indicated that the other determined the methods by which the assignments were performed and would be responsible for problem resolution. Only the worker indicated that he submitted a time sheet. Both parties agreed that the hours varied per week based on the availability of worker and the work; the worker noted his routine was to get the schedule from the office manager, and complete trips as assigned. The worker arrived at the firm's location two hours before the client pick-up to prep the vehicle; after the driving assignment, he returned the vehicle to firm. Both parties agreed that the worker was to perform the services personally; only the worker noted that the firm hired/paid any substitute workers.

Both the firm and the worker agreed that the firm provided the vehicle though the firm included that sometimes other parties provided the vehicles. The firm noted that the worker incurred insurance and fuel expenses; the worker noted he incurred dry cleaning expenses. If he put fuel in the vehicle, he was reimbursed when providing a receipt to the firm. Both agreed that the worker received an hourly rate of pay and was given advances if necessary. Both agreed that either party would be paid by the customer; the worker noted that he turned over the whole amount to the firm. The firm, however, noted that it received a commission when the worker received payment. Only the firm noted that the worker could incur a loss if he did not carry extra insurance as he was responsible for any damages to the vehicle. The firm noted that both parties work together to determine the payment for services although the worker indicated that it was the firm that established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the agreement without incurring a liability. The worker noted that he did not perform similar services for others; the firm disagreed. The worker did not indicate that the relationship had ended; the firm noted that there was no on-going relationship as the relationship was only through each assignment's completion.

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## Analysis

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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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. While the worker may not have received any training or instructions, he worked when the firm had work scheduled and he was available. He did not have set scheduled hours. However, 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 indicated that the worker did not have a continuous relationship with the firm. Information obtained indicated that the worker provided his services throughout a number of years. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. In addition, the worker was to provide the 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. This is understandable as the worker was driving the firm's vehicles and performing services under the firm's name, thereby as the firm's driver, having the ability to impact its reputation.

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. It was the firm that had the investment in the equipment. The worker submitted a time sheet and received an hourly rate of pay. Payment by the hour, 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.

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. There were no benefits and there was no written agreement. The worker was engaged as driver for the firm's transportation business. When doing so, the worker was not engaged in a separate business enterprise. His services instead were essential to the firm's continuing 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 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.

Please see Publication 4341 for guidance and instructions for firm compliance.