

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Driver/Vessel Control	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 a warehouse, brokerage, and transportation business. The worker was engaged to perform services as a driver. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker did not receive training on how to perform her services. She was instructed on the load times and destinations, to provide load reports and log books as required by the firm and DOT. The firm provided the worker with work assignments via text and voice mail. Work methods were determined by the firm and worker. Problems and complaints were reported to the firm for resolution purposes. The worker performed her services personally, at locations designated by the firm. She was required to provide the firm with signed packing slips as proof of deliveries.

The firm provided the worker with the trucking equipment, load information, fuel card, and emergency equipment needed to perform her services. The worker provided her CDL, log books, and DOT physical card. The worker incurred expenses for tolls, and truck cleaning supplies. The firm reimbursed the worker for those expenses. The firm stated that the worker rented the trucking equipment needed to perform her services, however no information was provided to support this statement. The firm paid the worker on an hourly rate basis for her services. Customers made payment to the firm for services rendered. Neither party provided information to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

There was no information provided to evidence that workers' compensation insurance was carried on the worker. The firm made employment benefits (personal days, paid vacations, sick pay, paid holidays, and insurance benefits) available to the worker. There was no information provided to evidence that the worker performed similar services for others, or that she advertised her 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 worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's facilities, equipment, tools and supplies, and she represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

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. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her 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 she performed her 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 for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov