

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & 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

Facts of Case

According to the information and documentation submitted, the firm's business is a logistics company. The worker performed services as a truck driver. The worker picked up parts and supplies in [REDACTED] and delivered them to their destination in [REDACTED]. The firm reported the worker's earnings on Form 1099-MISC at year end.

The worker personally performed his driving services from March 2016 to February 2017. The worker picked up a trailer on Sunday through Thursday evenings and drove to the destination by Monday through Friday mornings. The worker drove a truck provided to him as he neither leased a truck nor owned one. The firm established the level of payment for the services and the firm's customers paid the firm. The worker was paid per trip for his driving services, normally five trips per week, and some weeks he would receive a bonus. The firm controlled the amount of earnings paid to the worker. Towards the end of 2016, the firm provided the worker with paperwork regarding a lease arrangement for a truck and the worker declined to execute the leasing arrangement with the firm. The worker then terminated his work relationship with the firm.

Analysis

According to the information and documentation submitted by the firm and the worker concerning the work relationship, the firm provided the worker with his driving assignments. The worker personally performed his services according to a regular driving schedule.

The worker was paid per trip and the firm controlled payments to him. The worker drove a truck that he neither owned or leased and had no investment in facilities. The worker was free to terminate his services without incurring any liabilities.

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. 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.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.