

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

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 transportation provider business for clients. The firm engaged the worker through a verbal agreement to drive the firm's van and pick up and return clients home after providing transportation services. The worker received assignments through client requests and both the firm and worker determined the methods used to perform the services. The worker contacted the firm to resolve problems or complaints if needed. The worker's daily routine varied based on client requests. The worker performed the services personally and provided the firm with time and payment reports. The firm hired and paid substitutes or helpers if needed.

The firm provided a van and worker provided a cell phone. The worker did not lease equipment or space. The worker incurred cell phone expenses which were not reimbursed by the firm. The firm paid the worker an hourly wage and customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for products and services.

There were no contracts between the firm and worker. The worker did not receive any benefits. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker as a contractor under the firm's business name to the clients. Both parties retained the right to terminate the working relationship at any time without incurring any liability. After an initial trial period the firm reclassified the worker to employee status without any change to the working relationship.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm's business. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business using the firm's van under the firm's business name for the firm's clients on a regular and continuous scheduled basis over a period of about 3 months. The firm reclassified the worker to an employee without any change to the autonomy of the working relationship.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.

Based on the above factors we have determined the worker to have been an employee under common law for the entire working relationship. We appreciate the firm coming into compliance with federal employment tax laws towards the end of the working relationship.