

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Drivers & Vessel Control

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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 trucking business. The firm engaged the worker to drive the firm's truck and trailer and pickup and deliver loads. The broker assigned worker jobs to perform and the firm allowed the worker to accept or decline jobs. The worker was experienced so no training was needed. The firm instructed the worker to abide by DOT rules when performing services. The firm and worker determined the methods used to perform the services. The firm required the worker to provide the firm with log books and truck maintenance reports. The firm required the worker to contact the broker or firm regarding resolution of problems or complaints. The worker determined the daily routines. The worker hauled loads over the road in 48 states. The worker was required to perform the services personally.

The firm provided the truck and trailer. The worker provided personal items. The worker did not lease equipment or incur any business expenses. The firm paid the worker a percentage of what the loads paid. The firm allowed the worker draws as needed. The 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 services.

There were no contracts between the firm and worker. The firm provided no benefits. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm referred to the worker as a contractor under the firm's business name. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. The firm allowed the worker to determine the loads to work and work schedule based on broker availability of jobs to perform. The firm allowed the worker flexibility on where to fuel the truck and routes to take when making deliveries and/or picking up loads. The firm required the worker to perform the services personally and to contact the firm or broker regarding problems or complaints for resolution. The firm required the worker to perform the services personally. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the truck and trailer. The worker provided personal items. The worker did not incur any truck expenses and was paid a percentage of what loads paid. The firm allowed the worker draws against earnings as needed. The customers paid the firm. The worker could not suffer any economic loss and had no financial risk. The broker and driver determined the level of payment for the services the worker took and the firm determined the level of payment made to the worker for accepting the jobs. 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 or advertise as a business to the 'public. The worker personally performed services for the firm's business under the firm's business name over several years. 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 autonomy of the working relationship we have determined the worker to have been an employee under common law.