

## SS-8 Determination—Determination for Public Inspection

Occupation  
09DVC Driver

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. As the owner of the firm, you engaged the worker as a driver. You reported the worker's remuneration on Forms 1099-MISC for 2016 and 2017.

Information from the parties supports that you relied upon the worker's prior experience and training to perform his services. You offered the worker loads to drive; the worker could accept or refuse the load. The worker was responsible for resolving any problems or complaints that may have occurred. There were no set hours. You stated that the worker was not required to perform his services personally. There were no substitutes; if the worker did not want to do the work, you declined the load of cows.

You provided the truck and trailer. The worker provided his CDL license and experience, and incurred meal expenses. The worker's pay was determined upon when he drove. You did not cover the worker under workers' compensation. Customers paid your firm directly at prices you established. Neither party indicated an investment by the worker in your firm or a related business. You stated that the worker would have been responsible for any damages to the vehicle or animals.

You did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The worker stated that he did not advertise his services or provide similar services for others during the same time period. There is no evidence submitted showing the worker advertised his services or maintained a business listing.

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**Analysis**

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. You relied upon the worker's prior training and experience to perform his services. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. It is only reasonable to assume that you would have been ultimately responsible for resolving any problems or complaints that were beyond the worker's capacity to resolve. There is no indication that the worker engaged and paid others to perform services for you on his behalf. 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. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 worker provided his own CDL license; however, 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. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. 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. The worker was not engaged in an independent enterprise, but rather the services performed by the worker as a driver were a necessary and integral part of your trucking business. 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. Although you did not make benefits available to the worker, both parties retained the right to terminate the work relationship without incurring liability or penalty, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.