

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Driver/Chauffer	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8. From the information provided the firm is a ground transportation company and the worker was engaged from April 2006 to October 2016 as a chauffeur. The firm believes the worker was an independent contractor (IC) while performing services for them because he was free to accept work from other companies and he could pick the times he wanted to work.

The firm states the worker's assignments were determined when the worker called into their premises and he could either accept or decline any available assignments they had. The firm states the worker was required to personally perform his services on the road. The worker was required to notify the dispatcher if any problems or complaints arose for their resolution. The worker had no scheduled hours and he worked when he wanted if work was available. The firm states the worker attended safety meetings if he chose to attend. The firm states they hired substitutes or helpers if needed.

The firm provided a vehicle to the worker and the worker provided an office, telephone, and meals in order to perform his services. The firm states the worker did not incur expenses, he did not lease any equipment, and he was paid on a commission basis. The firm reported the worker's earnings on Forms 1099-MISC. The clients paid the firm for services rendered by the worker. The firm believes the worker could incur a loss if the trip was not completed or delayed and he would then receive no pay.

The worker was not eligible for employee benefits. The worker did not perform similar services for others and it is unknown to the firm if the worker advertised his services to the public. The firm states the worker was represented as a chauffeur to their clients. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

As in this case and in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on an as-needed basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

While the ability to accept or reject an assignment is a characteristic of an independent contractor, the total relationship needs to be analyzed to make an accurate decision of a worker's status.

Factors that illustrate whether there is 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. When there is a formal and valid lease agreement and the worker must pay a rental fee whether he works or collects fees or not, an opportunity to incur a loss is present. That did not happen in this case. The worker did not lease a vehicle from the firm which required him to make monthly payments to the firm whether he worked or not and therefore an opportunity to incur a loss. The worker did not have total control of the vehicle and an opportunity to determine how to increase his earnings as someone in business can.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, there was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services he performed for the firm and offering those services to the public. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him.

Based on the above analysis, we conclude that the firm 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.