

# 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 restaurant that offers take out delivery services to customers. The firm engaged the worker through a referral to assemble and make deliveries based on customer orders using the workers' personal vehicle. The firm determined the workers' work schedule and assigned worker jobs to perform. The worker contacted the firm regarding problems or complaints for resolution and the firm required the worker to resolve the problems accordingly. The firm required the worker to provide the firm with customers payment receipts., The firm required the worker to provide the firm with available schedules and the firm determined the hours the worker perform the services based on business needs. The worker performed services at the firm's place of business, over the road and to the firm's delivery locations. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the food needing to be delivered and the worker provided a personal vehicle. The worker did not lease equipment or space. The worker incurred expenses for the personal vehicle used. The firm did not reimburse any expenses. The firm paid the worker on a per delivery performed basis and the customers paid the worker for the products. The worker turned over the payment to the firm for the products and kept the delivery amount plus tips. The firm determined the level of payment for the products and the worker determined the level of payment for delivery of the product. The worker's economic loss and financial risk were related to damages of the personal vehicle.

There were no signed contracts between the firm and worker. The worker and firm disagreed on if the worker performed similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker advertised the firm's business with take out menu's. The worker performed the services under the firm's business name. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The relationship ended when the worker's personal vehicle was totaled in a accident.

---

## 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 assigned the worker services to perform based on the firm's business needs and customer orders. The firm took the orders from customers and told the worker the details on what to package and deliver to the customers. 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 significant financial investment in a business and did not incur any significant on-going 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. The firm provided the business, food, delivery means, menus, and job. The worker provided a personal auto. The firm determined the level of payment for the items delivered and the firm and worker determined the amount to be paid for making the deliveries. The customers paid the firm and worker and if the worker was paid the entire amount less the delivery charge was turned over to the firm. The workers' economic loss and financial risks were related to possible personal automobile damages. The risk of possible damages to a personal vehicle would not be considered having control over profit and loss with regard to performance of services in the operation of a business. The use of a personal vehicle to perform services would not be considered a significant financial investment in a business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. The worker did perform similar services for others while performing services for the firm per the firm and the worker indicated no similar services were performed for others. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services for the firm under the firm's name on a regular and continuous as needed basis over several months. The firm advertised the business and services.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The relationship ended when the worker's vehicle was totaled in an accident. 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.