

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Truck Driver	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

Information provided indicates the firm is a commercial trucking company. The worker performed services as a truck driver for tax year 2017. The firm issued Form 1099-MISC to report the income. The firm indicated there was a verbal agreement the worker would be an independent contractor, and he obtained his own customers. The firm provided a copy of the W-9 that was completed, signed at the beginning of the work relationship, requested by the firm. The firm indicated work assignments were via customers. The worker provided fuel and maintenance reports. Services were performed at the customer locations. The worker was to perform his services personally. The firm indicated they provided the truck and trailer. The equipment was parked at the worker's residence. The worker did not lease the equipment. The worker paid for his fuel. He was paid on a commission basis, 25% to the firm, 75 % to the worker. The firm indicated the customers paid both the firm and worker. The firm indicated the worker established the level of payment. Either party could terminate the work relationship without incurring a penalty. He did perform similar services for others. The firm stated he was represented as a contractor under the firm's business name. The worker quit.

The worker states he was approached by the firm and offered the job. He was told how, what, where he was supposed to do his job. He was drug tested before given the job. He agreed work assignments were by the customer, who contacted the firm. He provided a report of the short loads hauled. He was scheduled to work ten to twelve hours. He agreed he was required to perform his services personally. He agreed he did not lease the equipment, which was provided by the firm. He indicated he was paid by the hour and commissions. The customer paid the firm. either party could terminate the work relationship without incurring a penalty or liability. The worker indicated the firm did all the contacting. He indicated it was by mutual agreement the relationship ended.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

-A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

-The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. As is the case 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, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. All services appears to have been performed under the firm's business name. There was no a valid lease agreement for the use of the firm's equipment. The worker was required to provide fuel and maintenance reports for the use of the firm's equipment.