

## 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 corporation and operates a tow trucking business. The firm engaged the worker as a tow truck driver. There was no written agreement between the two parties. The firm contends the worker needed extra work and the worker stated he went through an interview process to get the position.

The worker was already qualified in this line of work and did not need any training. The worker did receive instructions on what services he should perform. The firm gave the worker his assignments. The firm determined how the assignments should be performed. The worker relied upon the firm to resolve his problems and complaints. The worker's schedule was dependent upon the firm's needs. The worker performed his services on the road.

The firm provided the tow truck and incurred all operating expenses to keep the truck on the road. The worker did not lease any equipment to perform his services. The worker was paid on a salary basis. The customers paid the firm directly for the services they received. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the work relationship without incurring a liability. The worker stated he did not perform similar services for others. The worker drove a truck with the firm's business name on it. The worker terminated his services.

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## Analysis

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.

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. In the instant case, the worker drove the firm's tow truck for the firm's tow trucking business which demonstrated the worker's services were integrated into the firm's daily operations.

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. In the instant case, the worker was given his instructions by the firm and the firm determined how those assignments should be performed which showed the firm had control over the worker's services as an employer.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. In the instant case, the worker did receive a salary.

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. In the instant case, the worker could not suffer a significant loss as operating their own business. In the instant case the worker did not have any investment as the worker used the firm's tow truck and the firm incurred all operating expenses to keep that truck on the road.

The worker was an employee according to common law. The information provided by both parties showed the worker received his assignments from the firm and the firm determined how those assignments should be performed as an employer. The fact the worker relied upon the firm as an employer to resolve his problems and complaints demonstrated a dependency upon the firm as an employer. It was the firm that had the financial investment as the worker used the firm's truck and the firm incurred all operating expenses to keep the truck on the road. The worker's services as a truck driver using the firm's truck for the firm's towing business demonstrated the worker's services were integrated into the daily operations of the firm's business.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989