

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC 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

The firm is operating a trucking business and engaged the worker through an application and contract process to perform load deliveries for the firm's business using the firm's truck and trailer. The firm provided the worker with the necessary training in order to perform the services according to motor carrier safety rules and regulations. The firm assigned worker jobs through the firm's dispatching department. The firm provided the worker with job specific directions on what services to perform, times to pick up and make deliveries and where to make the deliveries. The firm allowed the worker to determine the work schedule in order to meet the job requirements. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm and worker determined the methods used to perform the services. The firm required the worker to provide the firm with bills of lading and trucking reports. The worker was required to perform the services personally.

The firm provided the truck and trailer and safety equipment and the worker did not provide any equipment or materials or incur any business expenses. The firm reimbursed all truck maintenance and expenses incurred through settlements. The firm paid the worker on a per mile driven basis and the customers paid the firm. The firm carried mandatory occupational health insurance. The worker was responsible for loss or damages to firm's equipment and materials and showed deductions on final settlements if applicable. The firm established the level of payment for the services.

There was a signed contract indicating the various working relationship issues and addressed the worker's status to be an independent contractor. The firm provided the worker with mandatory occupational health insurance coverage and bonuses. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker as an employee under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the worker services after an accident was reported and the worker would not submit to testing for drugs and alcohol.

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. 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 on-going significant business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. 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 paid the worker on a per mile driven basis and the customers paid the firm. The firm reimbursed various business related payments and deducted advances and deductions from the settlements paid to the worker as required by the rules and regulations of the trucking industry. The worker could not suffer any economic loss and had no financial risks with regard to performance of the services for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor agreement between the firm and the worker that addressed various working relationship issues and expectations. The firm provided the worker with mandatory occupational health insurance and bonuses benefits. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business under the firm's business name and authority on a regular and continuous basis over several months.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the worker's services without incurring any liability for termination of the working relationship after an accident occurred. 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.

Based on the autonomy of the working relationship we have determined the worker to have been an employee under common law.