

**SS-8 Determination—Determination for Public Inspection**Occupation  
09DVC DriverDetermination:  
☒ 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 has contracted to haul a customer's items for the customer's business operations and engaged the worker through a referral and application process to drive the firm's trucks and make deliveries. The firm allows the worker to accept or decline job offers that the worker can perform according to the deadlines expressed by the customer. The worker determines the work schedules in order to meet the deadlines. The firm indicated there was a written agreement between them and provided an unsigned Independent Contractor contract acknowledgment.

The firm provided no training. The firm's customer dispatches jobs. The firm requires the worker to contact the customer and the firm regarding problems or complaints for resolution. The worker is required to provide trucking reports to the firm's customer and the firm. The worker performs services at the firm's customer location and delivery sites. The firm does not require the worker to attend any meetings. The firm does not require the worker to perform the services personally. The firm's customer's approval is required for the worker to hire substitutes or helpers and either the firm or firm's customer would pay them.

The firm provides the truck, the firm's customer provides trailers and jobs. The worker does not lease anything or incur any business expenses. The worker incurs personal expenses to maintain driving credentials and personal items. The firm nor the firm's customer reimburses expenses. The firm pays the worker on a per mile basis and the customer pays the firm. The firm does not carry workers' compensation insurance. The firm states the workers' economic loss and financial risks are related to equipment damages and the worker indicates none to this issue. The firm determines the level of payment for services.

There were no signed contracts between the parties provided. The firm does not provide the worker with any benefits. The worker does not perform similar services for others or advertise as a business to the public. The firm represents the worker as a trucker or driver to the customers. The relationship has not ended per the firm and worker.

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## Analysis

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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 has control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services being performed by the worker.

When a worker does not have a significant financial investment in a business requiring significant on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker has no financial business investments and no control over profit and loss due to significant business capital outlays being made. The risk of damages to equipment would not be considered having control over the costs related to the operation of a business and there was no legal documentation provided indicating this to be a risk the worker legally would be responsible for. The firm has the business investment and control over profit and risk of loss with regard to the services the worker is performing for the firm's business operation. These facts evidence financial control by the firm over the services being performed by the worker.

There were no signed contracts provided but there was an unsigned Independent Contractor acknowledgment provided. The firm does not provide the worker with any benefits. The firm allows the worker to accept or decline job offers by the firm's customer according to the deadlines indicated to perform the services. The worker does not perform similar services for others or advertise as a business to the public. The firm represents the worker as a driver or trucker to the firm's customer.

Both parties retain the right to terminate the working relationship at any time without incurring any liability. 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 information provided we have determined the worker to be an employee of the firm under common law.