

# 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

The firm is a log trucking business and the worker was engaged through an application process to drive the firm's logging truck and equipment between pick up and delivery locations. The firm provided the worker with job instructions and assignments verbally. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding resolution of problems or complaints. The worker provided the firm with load reports from the mills. The worker's daily routines varied based on the weather, mileage, and load availability issues. The worker performed the services between logging sites and mill sites. The worker was required to attend safety meetings. The firm required the worker to perform the services personally. The firm hired substitutes or helpers directly or with prior approval given to the worker and the firm paid them.

The firm provided the truck, trailer, and jobs. The worker did not lease equipment or incur any business expenses. The firm paid the worker a flat rate per load and the customers paid the firm. The firm did not allow any drawing accounts. The firm carried workers' compensation insurance. The worker did not establish the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The worker did not perform similar services for others. The worker did no advertising as a business to the public. The firm referred to the worker as a driver 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.

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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 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 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 in the trucking equipment 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 and the firm was paid by the customers. The firm determined the level of payment for the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm's business. The worker did not advertise as a business to the public. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous as needed basis over a period of several months.

Both parties retained 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.