

# SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & Vessel Control	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 worker had previously filed a request for work classification determination for this firm, same services for tax years 2012 through 2014. This office determined the worker to have been an employee. A second request was filed for tax years 2015 through 2017, for the same firm, same services.

In the prior determination both firm and worker indicated he had been treating him as an employee, then stopped withholding taxes, with no changes in services. The worker stated the firm continued to instruct him on delivery of products to the automobile plant. The worker indicated instructions were give what time to clock in and time to clock out. The firm set specific job duties, hours and instructions. He would pick up the paperwork at 5:30 am and work until loads were delivered, usually to five pm, Monday through Friday. He had no authority to hire. The firm provided the trucks. He stated he had been paid by the hour, the customer paid the firm, no cash advances were given. He indicated he had been given paid vacations, sick pay, paid holidays and personal days. Either party could terminate the work relationship without incurring a penalty or liability. He indicated he had quit.

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**Analysis**

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The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Conclusion: Based on the above analysis, this is an erroneous misclassification of employment. The firm had been previously notified the worker should have still been classified as an employee and not changed to an independent contract status. The firm had indicated in the prior case the state had told him he could treat the drivers as independent contractors and issue Form 1099-MISC documents. However, Federal work classification determinations, have authority over state determinations. Therefore, we conclude that the firm continued to direct and control the services performed by the worker throughout the entire work relationship. All income should have been reported as wages on Form W-2 with all applicable tax withholdings.