

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 firm is in business to transport vehicles from point to point for its clients. The firm engaged the worker as a driver, to drive vehicles from its clients locations to transport destinations. The worker submitted an employee application to the firm. She signed the firm's subcontractor agreement that indicated she would be considered an independent contractor regarding the driving services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker attended orientation, and received safety rules provided by the firm's clients. The firm provided work assignments through text messages regarding the time and place to show up if the worker wanted work for the day. The firm and its clients determined the work methods by which to perform the services. The firm was contacted regarding problems that needed resolution. The worker was required to perform pre-trip vehicle inspections, complete reports and submit them to her supervisor. The worker was required to perform her services personally, at locations designated by the firm and its client.

The worker drove vehicles provided to her. The worker provided reflective gear and flashlights needed to perform her services, and incurred expenses for those items. The worker received payment for her services based on an hourly wage as established by the firm. Clients paid the firm for services rendered. The worker was required to provide personal insurance, Her economic loss/financial risks related to accidents caused by her in the performance of her services.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and she did not advertise her services to the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed her services under the firm's supervision, followings its instructions and work methods. The worker's services were performed personally, in the name of the firm, for its clients. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investments, the reputation of its business operations, and its business relationships with its clients.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services she performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov