

# 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 the business of providing trucking services. The worker was engaged as a truck driver. He had filled out an application, and was provided with the firm's policies. The worker received a Form 1099-MISC for his services in 2016 and 2017. There was no written agreement.

According to the worker, the firm gave the worker instructions on how to load the cattle into the trailer; the firm noted that no instructions were given. Both parties agreed that he received his work assignments through dispatch via email or text. Each party indicated that the other firm determined the methods by which the assignments were performed but agreed that the firm would be contacted if any issues or problems arose. The worker submitted bills of lading, log sheets, fuel receipts, repair and maintenance receipts. Both agreed that the worker's daily routine varied depending on miles left to unload or load location and/or delivery times. Both agreed that the worker was required to provide the services personally.

Both the firm and the worker agreed that the firm provided the truck, cattle trailer, flatbed trailer, bee suit, dunnage, tarp, bungees, pipe stakes and fuel. The worker provided food, lodging, and a cattle prod. The firm reimbursed the worker for rental cars. Both parties agreed that the worker was paid commission and had no other economic risk. Both agreed that the customer paid the firm and that the firm carried workers' compensation insurance on the worker. The load-broker established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. The relationship ended when the worker quit.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm had the investment in the truck and the necessary equipment. While the worker may not have required extensive instructions, the firm retained the right to redirect the worker's activities as needed by its operation. The worker's schedule varied but if a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. In addition, the worker's services were continuous throughout the time period in question. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Both the firm and the worker may have obtained work for the firm's hauling business; however, it was only the firm that had the investment in the equipment itself. The worker did not lease the equipment nor was he responsible for the costs of its operation or maintenance. The worker was paid a commission and had no other economic risk. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. The worker was engaged as a truck driver for the firm's trucking operations. When doing so, the worker was not engaged in a separate business venture. The fact that he required little or no training and was allowed to park the truck at his home did not make him self-employed. 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 the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.