

**SS-8 Determination—Determination for Public Inspection**

Occupation

09DVC Drivers &amp; Vessel Control

Determination:

☒ 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 Worker, a delivery driver\*, submitted Form SS-8 related to services the Worker provided to the Firm, an agricultural and commercial supply business, between January 2018 and December 2018. The Worker submitted TY 2018 Form 1099-MISC issued by the Firm; the Firm submitted a responsive SS-8. The Firm's SS-8 Part I response states the Worker's services were provided between April 13, 2019 and November 9, 2019, but the Firm only attached a TY 2018 1099-MISC. Research finds no pay documents between the parties for 2019; therefore, this determination only addresses work performed in 2018. The parties agree there was no written agreement between them. The Worker did not work for the Firm in any capacity before providing the services at issue.

The Firm states that it provided the Worker with instructions by directing the Worker to locations where the Worker was to deliver the Firm's product. The parties generally agree that the Firm's manager gave the Worker his job assignments, telling him, as the Worker described it, "where to go and when to go." The parties also agree that the Firm's manager determined the method by which the Worker's assignments were performed. Both parties state that the Worker was not required to perform his services personally; however, the parties agree the Firm was responsible for hiring and paying substitutes or helpers if the Firm needed them.

The Firm describes the Worker's daily routine with the Firm as "when the deliveries were required, he made the deliveries," on a part time basis. It is not uncommon for delivery drivers to work part time. The Worker generally concurred that the Firm directed him. The parties agree that the Worker was required to perform his duties at and from the Firm's place of business, making deliveries to the Firm's customers as assigned by the Firm and then returning to the Firm when deliveries were complete. The parties also agree the Firm required the Worker to contact the Firm's manager if problems or complaints arose, and that the Firm's manager was responsible for the resolution of such problems or complaints. The parties agree the Firm did not require the Worker to make reports or attend meetings.

The parties agree the Firm provided the Worker with the delivery truck required for the Worker to do his job, and that the Worker did not lease equipment, space, or a facility. The parties also agree the Worker did not incur any expenses in performing services for the Firm. Firm paid the Worker an hourly wage and the parties agree that no drawing account for advances was allowed the Worker. The Firm states that it carried worker's compensation insurance on the Worker. In [taxpayers' State], workers' compensation coverage is mandatory for all employers who employ one or more employees [Taxpayers' State] Code section 23-2-1 and [Taxpayers' State] Code St. R. section 85-8-1, et. seq.,

The Firm and the Worker agree that, beyond the loss of wages, the Worker risked no economic loss or financial risk working for the Firm. The parties agree that the Firm's customers paid for the Firm, and that the Firm established the level of payment for the services provided or products sold. The parties agree that the Worker did not belong to a union, that the Firm made no benefits available to the Worker, and that the relationship between the Firm and the Worker could be terminated by either party without liability or penalty. The Worker did not perform similar services for others during the relevant time periods. The parties agree that there was no agreement prohibiting competition between the Firm and the Worker while the Worker was working for the Firm or during any later period. The Worker did no advertising.

The parties generally agree that the Firm represented the Worker to customers as the Firm's truck driver. The parties agree that the Worker had no responsibilities in soliciting new customers for the Firm. The Firm states that it required the Worker to return to the Firm after he completed tasks assigned by the Firm. The Firm states that orders were submitted to and subject to approval by the Firm, and the Worker did not pay for the privilege of serving Firm's customers.

The Firm states that its relationship with the Worker ended when the work was completed; the Worker did not affirm the relationship with Firm has ended and indicated that the question of why the relationship ended was not applicable. Because the Worker initially submitted his SS-8 several months prior to the Firm submitting its responsive SS-8, it is possible the status of the relationship changed sometime between those respective submissions.

\*The Worker does not meet the criteria for statutory employee agent-drivers. IRC 3121(d)(3) limits the category of Agent-Driver to workers who distribute meat or meat products, vegetables or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services as defined in their commonly accepted sense.

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## Analysis

Generally, the relationship of employer and employee exists when the firm for which the worker performs services has the right to control and direct what the worker does and how the worker does it. It isn't necessary that the firm exercise its right to direct or control that worker, only that the firm has the right to do so. The common law rules for determining employment status are described in Treas. Reg. 31.3121(d)-1(c). Under common law, a worker is an employee when the person for whom the services are performed has the right to control and direct the individual who performs the services. This control reaches not only the result to be accomplished, but also the details and means by which that result is to be accomplished. Note that courts have held that the degree of supervision necessary to demonstrate control is only "such supervision as the nature of the work requires." *McGuire v. United States*, 349 F. 2d 644, 646 (1965 9th Cir).

The Firm and the Worker agree on most of the facts. The Worker performed services as a delivery truck driver for the Firm, using the Firm's truck to deliver farm and livestock related products sold by the Firm. Though the Firm is not a core trucking business, its website advertises, both in print and through an introductory video, that the Firm offers delivery services to customers - making the Worker's operation of the Firm's delivery truck an integral component of the company's advertised business. The Worker did not perform his services for the Firm through an independent business or enterprise, nor did the Worker own the delivery truck or have any sort of equipment lease agreement. The Firm's manager determined when, where, and how the Worker was to perform his job. This integration of the Worker's services into the Firm's business operations supports a finding that the Worker was subject to the Firm's direction and control.

The Worker performed his duties out of the Firm's place of business and was required to make deliveries to the Firm's customers when instructed to by the Firm. To facilitate this, the Firm provided its truck and did not require the Worker to pay for the vehicle's fuel, maintenance, or insurance. Since the Worker did not own the delivery truck or other job-essential equipment, he did not incur risks or exposure to liability; he had no investment in the business, and no chance of losing money beyond his wages. The Worker was limited to the Firm's hourly rate of pay arrangement and could not realize a profit or loss. As generally required of employers under [taxpayers' State] law, the Firm carried worker's compensation insurance on the Worker and, in doing so, acknowledged the nature of the relationship between the Firm and the Worker. These facts are indicative of an employee-employer relationship.

The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. The Firm paid the Worker an hourly wage based upon his work schedule, which the Firm set by virtue of its customers' needs. Regardless of whether the Worker worked part-time for the Firm, when the Worker was on the job the Firm exercised significant control over him. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest that the Worker performed similar services for others during the relevant time period. Nor is there evidence to suggest the Worker advertised delivery driver business services to the general public during the term of his work for the Firm. These facts are also strong indicators of an employee-employer relationship.

Based on the above facts and analysis, this determination concludes that the Firm had the right to exercise direction and control over the Worker to the degree necessary to establish that the Worker was a common law employee of the Firm during the relevant time period, and not an independent contractor operating a separate enterprise. Accordingly, the Worker is classified as an employee of the Firm for employment tax purposes.

The Firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.