

**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 truck driver\*, submitted a Form SS-8 related to services the Worker provided the Firm, a trucking company, for about 3 months in 2010. The Worker also submitted a Form 1099-MISC issued by the Firm to the Worker for TY 2010. The Worker believes he was the Firm's employee and should have been issued a Form W-2. With no mention of the 1099-MISC it had issued the Worker for TY 2010, the Firm responded with a blank SS-8 and an unsigned note advising "we could not find any record under this name [Worker's Name]."

Because the Firm didn't respond to any of the questions on the SS-8 it submitted, the facts presented below are limited to what the Worker declared in the SS-8 he submitted.

The Worker didn't work for the Firm in any capacity before providing the services related to this case and didn't have any written agreement with the Firm regarding the services he provided.

The Firm gave safety training to the Worker and instructed him on any equipment peculiarities. The Firm also instructed the Worker on which routes to take, where to buy fuel, and changes requested by the customers. The Worker received his assignments from the Firm's dispatcher and was electronically monitored by the Firm while on the job. The Firm's dispatchers determined the methods by which the Worker performed his assignments.

The Firm required the Worker to contact the Firm's dispatcher if problems or complaints arose and the dispatcher was responsible for resolving those problems or complaints. The Firm required the Worker to provide daily vehicle inspection reports, hours of service reports, proofs of delivery, and weekly settlement sheets listing all work performed by the Worker that week.

The Worker describes his daily routine as showing up at the company yard, starting up the truck assigned to him, and inspecting it and the chassis/container attached to it. He then picked up his assignment from the Firm's dispatcher, who directed the Worker where to pick up his first load. After picking up this first load, the Worker notified the dispatcher that he was on his way out. After arriving at the customer's yard, the Worker called the Firm's dispatcher for his next assignment. This process was repeated two to four times a day. At the end of his workday the Worker returned to the Firm's yard with truck and container, parked it as directed by the Firm's yard clerk, and filled out his daily list of movements and pods to give to the Firm's dispatcher. The Worker's day – from about 7:30a.m. to 5:30p.m. -- was primarily spent in the Firm's yard, driving the Firm's truck to carry out the Firm's assignments for the Firm's customers.

The Firm required the Worker to attend safety meetings and would put the Worker out of service if he failed to attend. The Firm also required the Worker to personally perform his services. As to substitutes or helpers, the Firm did all the hiring and if the Worker could not go to work the Firm assigned the truck to someone else.

The Firm provided the Worker with a truck, trailer, cargo, forms, documentation, yard, office, office phones, computers, and electronic monitoring devices. The Worker provided his sunglasses, cell phone, gloves, and safety vest. The Worker did not lease equipment, space, or a facility. The Worker incurred expenses for lunch, phone, and a pen. The Worker also incurred the expense of diesel for the truck, explaining that he advanced the diesel for the Firm's convenience and the Firm reimbursed him by factoring the fuel expense into the Worker's pay. The Worker states the Firm paid him on a piece work basis, per trip. The Firm did not make a drawing account available to the Worker.

Customers paid the Firm. The Firm carried worker's compensation insurance on the Worker. The Worker incurred no economic loss or financial risk beyond the normal loss of wages, and the Firm set the level of payment for services provided.

The Worker notes no benefits that the Firm made available to him. The Worker's relationship with the Firm could be terminated by either party without incurring liability or penalty. The Worker did not provide similar services to others during the 3-month period he worked for the Firm. The Worker is a union member but states there was no collective bargaining agreement at the Firm. The Worker did not advertise. The Firm represented the Worker to customers as its driver.

The Worker's relationship with the Firm ended when the Worker quit.

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## Analysis

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Because the Firm did not respond to any of the questions on the SS-8 it submitted, the case facts relied on in this analysis are limited to those declared in the Worker's SS-8, as set forth above.

Generally, the relationship of employer and employee exists when the person or entity the worker is performing services for has the right to control and direct what the worker must do and how the worker must do it. It isn't necessary for the person or entity to actively direct or control the worker, only for it to have the right to do so.

Though it may seem counterintuitive, in determining worker classification for federal employment tax purposes, if an employer-employee relationship exists any oral or written contract, handshake agreement, intent, or understanding between the parties that designates the worker as an independent contractor must be disregarded – because, in this context, the actual working relationship between the parties is what matters. IRC 31.3121(d)-1(c).

As a trucking company engaged in trucking freight for customers, the Firm needed drivers to haul the freight. As one of the Firm's truck drivers, the Worker was tasked with performing the trucking jobs assigned by the Firm, using the Firm's truck and trailer. Given that, it's reasonable to conclude the Firm's truck drivers were integral to the Firm's business operations -- the Firm's business success depended on its ability to satisfactorily deliver freight for its customers so the customers would, in turn, pay the Firm. The Firm was ultimately responsible for the quality and standard of the Worker's service and for the satisfaction of the Firm's customers. How the Worker carried out the Firm's assignments could make or break the Firm's reputation and, ultimately, its business survival. This gave the Firm the right to direct and control the Worker in order to protect its financial investment, business reputation, customer property, and customer relationships. Such integration of the Worker's services into the Firm's business operations generally points to the Worker being subject to the Firm's direction and control and is highly indicative of an employer-employee relationship.

While workers who can realize a profit or suffer a loss as a result of their services are generally independent contractors, workers who cannot are generally employees. The Worker did not invest capital or incur economic loss or financial risk in working for the Firm. With the pay arrangement set by the Firm, the Worker could not realize a profit or incur a loss. These facts are indicative of an employer-employee relationship.

The Worker was not providing services to the Firm through engagement in an independent enterprise; rather, the services performed by the Worker were a necessary and integral component of the Firm's trucking business. The Worker and the Firm each retained the right to terminate their work relationship at any time without incurring a liability. There is no evidence suggesting the Worker performed similar services for others as an independent contractor or advertised business services to the general public during the 3-month term of this work relationship.

As noted above, common law factors are considered when examining worker classification issues. Based on the facts presented and researched, this analysis under the common law concludes with the determination that the Firm had the right to exercise direction and control over the Worker to the degree necessary to establish the Worker was a common law employee of the Firm during the relevant time period, and not an independent contractor operating a trade or business. 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.