

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

## Occupation

09DVC.79 Truck Driver

## Determination:

☒ Employee☐ Contractor

## UILC

## Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a partnership in the business of truck leasing/transporting. The worker was engaged by the firm as a truck driver. There was a written agreement between the two parties. The worker filled out an application for the position.

The worker received his loads from the firm. The worker did ultimately rely on the firm to resolve his problems and complaints. The worker was required to submit the regular DOT reports along with daily vehicle inspection forms and settlement sheets. The worker's schedule was dependent upon the loads acquired by the firm. The worker performed his services on the road. The worker stated he was required to attend safety meetings. The worker was required to perform the services personally.

The firm provided the truck and trailer and incurred all operating costs to keep the rig on the road. The worker did not lease any equipment to perform their services. The worker was responsible for his commuting expenses. The worker was paid by the mile. The worker is allowed a drawing account. The customers paid the firm directly.

The worker received paid vacation time. Either party could terminate the relationship without incurring a liability. The worker stated he did not provide similar services for others at the same time he performed services for the firm and the firm stated the worker did perform similar services for others. The worker stated he was represented as a driver and the firm stated they represented the worker as a contract driver. The worker terminated his services.

## Drivers Independent Contractor Agreement

- The worker was engaged on an irregular and inconsistent basis.
- The worker would comply with all federal rules and regulations and the standard policies of the firm.
- The worker was free to accept or refuse loads
- The worker was responsible for penalties and payments, maintain good driving habits, maintain necessary travel logs and other documentation by the firm.

The firm provided records of payments to the worker showing a weekly payment to the worker beginning on 7-23-12 to 5-11-13. There was also a payment for a Christmas bonus of \$100.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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.

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**Analysis**

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Therefore, your 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 worker was an employee according to common law. The information provided by both parties showed the firm gave the worker his assignments and the worker's schedule was set by meeting the firm's clients' needs which showed control over the worker. The fact the worker was filled out an application for the position and was required to perform his services personally showed the firm was interested in the methods used as well as the end result as an employer. The firm had the financial investment as the firm provided the worker with the truck, trailer and incurred all operating expenses to keep the rig on the road. It was the firm that could suffer a significant loss if the firm did not collect the amount they charge to their customers. The fact the worker received employee benefits i.e. vacation pay and Christmas bonus demonstrated an employer-employee relationship existed. The worker drove the firm's truck fulfilling the firm's agreement with the customers demonstrated the worker's services were integrated into the firm's daily operations.

Based on the above analysis, we conclude 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, and not an independent contractor operating a trade or business.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989