

## SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.85 Driver

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is a trucking business. The firm engaged the worker through an application process to drive the firm's truck. The firm provided the worker with instructions on how to strap on loads and contacted the worker as jobs were available. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints the worker was not able to resolve and the firm required the worker to resolve them. The worker was required to provide the firm with job detail reports and a W-9 Form at the beginning of the working relationship. The worker's daily routine varied based on the assigned work loads. The firm required the worker to perform the services personally and obtain the firm's prior approval to hire substitutes or helpers and the firm paid them.

The firm provided the trucks and equipment needed by the worker to perform the services. The worker did not lease equipment. The worker incurred travel and work related expenses and the firm allowed the worker draws to pay for business expenses. The firm paid the worker a salary and the customers paid the firm. The firm determined the level of payment for the services. The firm stated the worker's economic loss and financial risk were related to damage of equipment and worker indicated job injury to this issue.

There were no contracts provided between the firm and worker. The firm indicated worker was a contractor and was provided with a contractor application & W-9 and required to provide his own insurance. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker stated no similar services were performed for others while performing services for the firm. The worker did no advertising as a business to the public. The firm represented the worker as a contractor working under the firm's business name. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case you engaged the worker who had experience to drive your truck for your business operation. You provided the worker with the necessary training to perform the services and called the worker when jobs were available to perform. You and the worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The worker contacted you regarding any problems or complaints and you required the worker to resolve them. You required the worker to perform the services personally and obtain your prior approval to hire substitutes or helpers and you paid them. These facts evidence behavioral control by you over the services performed by the worker.

You provided the truck, equipment, and materials needed by the worker to perform the services. The worker did not lease equipment or incur any on-going significant business expenses. You allowed the worker draws to pay for business expenses. You paid the worker a salary and your customers paid you. You determined the level of payment for the services. The worker could not suffer any economic loss due to significant on-going business capital outlays being made. The worker did not have control over profits and losses with regard to the services performed. These facts evidence financial control by you over the services performed by the worker. The risk of damage to your equipment would not be considered control over profit and loss in a working relationship. There were no legal binding documents provided indicating the worker was responsible for this issue.

There were no contracts between you and the worker provided. You indicated there was a contractor application between you and the worker. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. You stated the worker did perform similar services for others and was not required to obtain your prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. You both agreed the worker did not advertise to the public as being engaged in a business. The worker personally performed services for your business on a regular and continuous as needed basis over a period of several months under your business name.

Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.