

## SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.90 Driver

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is a trucking business. The firm engaged the worker to drive the firm's truck. The worker was experienced so no formal training was provided by the firm. The firm contacted the worker with assignments and determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with log reports and signed bills of lading. The worker's daily routines varied based on daily assignments. The worker performed the services between pickup and delivery locations. The worker attend meetings as required by the firm. The firm required the worker to perform the services personally. The firm provided and paid substitutes or helpers as needed.

The firm provided the truck, trailer, materials, and supplies and paid all maintenance and fuel expenses. The worker did not lease equipment or incur any significant business expenses. The firm reimbursed all trucking related expenses. The firm paid the worker 25% of what the loads paid. The customers paid the firm. The firm determined the level of payment for the services. The firm allowed drawing accounts and deducted them from the settlements. The firm did not carry workers' compensation insurance. The worker could incur expenses for traffic violations and could suffer an economic loss if truck was damaged and needed repairs.

There was a lease arrangement signed by the worker in a prior year but nothing in 2013. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker was prohibited for using the firm's truck to haul freight on his own. The firm referred to the worker as a contractor of the firm's business to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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 prior experience to drive your truck. You assigned the worker services to perform based on your business needs. You determined the methods used by the worker 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. You required the worker to contact you regarding problems or complaints for resolution. You required the worker to attend meetings and provide you with signed bill of ladings, detailed expense reports, and trip reports. You required the worker to perform the services personally. You hired and paid substitutes or helpers as needed. These facts evidence behavioral control by you over the services performed by the worker.

You provided the truck, trailer, equipment, materials, and supplies. You paid all truck maintenance and fuel expenses. You reimbursed the worker for all trucking related expenses. You paid the worker 25% of what the loads paid and your customers paid you. You determined the level of payment for the services. You allowed the worker drawings against commissions and deducted them from the settlements. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to performance of the services for your business operation. The issue of fines and damages would not be considered control over profit and loss. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by you over the services performed by the worker.

There were no current contracts between you and the worker indicating the worker to be an independent contractor. The prior lease agreement was terminated when the working relationship ended in an earlier year. The worker did not perform similar services for others while performing services for your business and was prohibited from performing services with your equipment on his own. The worker did no advertising as a business to the public. The worker personally performed services for your business under your business name and authority on a regular and continuous basis over a period of about 5 months.

Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.