

## SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.97 Truck 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 a firm truck for the firm's business operation. The worker was experienced so not formal training was provided. The firm's designated customer assigned the worker services to perform. The firm, firm's customer, and worker determined the methods used to perform the services. The worker was required to contact the firm or firm's customer regarding any problems or complaints for resolution. The firm required the worker to provide the firm with delivery reports. The worker performed the services at the firm's place of business, firm's customer location, and over the road. The worker's schedule varied based on jobs assigned to perform. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the truck, the firm's customer provided the trailer and freight and the worker provided driving credentials. The worker did not lease equipment or incur any business expenses. The firm paid the worker a percentage of what the loads paid and the firm's customer paid the firm. The worker did not determine the level of payment for the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk per the worker. The firm indicated the worker's economic loss and financial risk were related to possible damages to equipment or materials due to negligence.

There was a verbal working relationship agreement per the firm. 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. 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 the firm engaged the worker to perform services for the firm's business customer and the firm's customer assigned the worker services to perform. The firm, firm's customer, and worker 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. The firm required the worker to contact the firm or firm's customer regarding any problems or complaints for resolution. The firm required the worker to provide the firm with delivery reports. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers as needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the truck, the firm's customer provided the trailer and loads needing delivery and the worker provided driving credentials. The worker did not lease equipment or incur any business expenses. The firm paid the worker a percentage of what the loads paid and the firm's customer paid the firm. The worker did not control the level of payment for the services performed. 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 the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker. The risk of possible loss or damages to equipment or materials would not be consider control over profit and loss in a working relationship.

There was a verbal working relationship agreement entered into between the firm 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. 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 personally performed services for the firm's business operation under the firm's business name over a period of several years on a regular and continuous basis. Both the firm 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.