

**SS-8 Determination—Determination for Public Inspection**Occupation  
09DVC.98 DriverDetermination:  
☒ Employee ☐ Contractor

UILC

Third Party Communication:  
☒ None ☐ Yes**Facts of Case**

The firm is a limited liability company operating a business to provide customers with water. The firm engaged the worker as a delivery person. There was no written agreement between the two parties.

The worker stated he receive training from the firm. The worker received his assignments from the firm. The worker relied upon the firm to resolve problems and complaints. The worker was required to report to the firm the deliveries he made and the hours he drove. The worker was required to begin his services at 9 a.m. and worked until the deliveries were done. The firm stated, "The employee worked on his own schedule...." The worker provided his services on the road making deliveries. The worker was required to perform the services personally.

The firm provided the truck and incurred the expenses to keep the rig on the road. The firm also provided the water supply. The firm would reimburse the worker any fuel expense or supplies expense he might incur. The worker was paid on an hourly basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker stated he was represented as the firm's driver making deliveries under the firm's name. The firm stated they represented the worker as a contractor. The worker terminated his services from the firm.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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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The worker was an employee according to common law. The information provided by both parties showed the firm gave the worker his assignments and then required him to perform the services personally. This demonstrated the firm was interested in the methods used as well as being interested in the end result as an employer. The worker was required to have a set schedule to meet the firm's customers' needs. The fact the worker was required to report to the firm showed the firm did retain control over the worker's services. It was the firm that had the financial investment since the firm provided the truck and incurred all operating expenses to keep the rig on the road. The worker did not have a significant investment and could only suffer a loss as a result of non-payment for missing a day of work. The worker made deliveries for the firm under the firm's name, to the firm's customers which 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