

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.106 Driver	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a single-member limited liability company in the delivery business. The firm engaged the worker as a driver/helpier. There was no written agreement between the two parties.

The worker stated he was instructed how to load the truck. The worker received his assignments from the firm but the firm stated the worker received his assignments from a third party. The worker stated the firm determined how the assignments should be performed and the firm stated the third party made that decision. The worker stated he contracted the firm to resolve his problems and complaints and the firm stated the worker would contact the third party. The worker stated the firm set his schedule and the firm stated the worker made his own schedule. The worker's services were performed on the road. The worker stated he met with the firm most mornings.

The worker stated the firm provided a uniform, truck, dolly, blankets, fuel, checks, etc. The firm stated the worker provided everything he needed. The worker did not lease any equipment to perform the services. The worker stated the firm handled all expenses incurred with operating the truck. The worker stated he was paid a specific rate and the firm stated the worker set his own rate. The worker stated he was allowed an advance. The customers paid the firm directly. The firm carried worker's compensation on the worker. The worker was liable for his own equipment. The worker stated the firm established the level of payment for the services provided and the firm stated the third party established the level of payment.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated he was required to give a two week notice or loose the pay for the weeks owed to him. 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 an employee of the firm's but the firm stated the worker was represented as a contractor for the third party. The worker terminated his services from the firm.

In a phone call with the worker he stated he was hired by [REDACTED]. [REDACTED] gave him his schedule each week. He was required to make the deliveries according to the time frame set by the firm. The firm provided him with a truck and they incurred all of the expenses related to keeping the truck on the road.

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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.

Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Analysis

The worker was an employee according to common law. The firm engaged the worker both as a driver and as a helper to make deliveries according to the firm's agreement with their customer. The information provided by both parties showed the worker received his assignments from the firm. The firm determined the worker's schedule by instructing what time to make the deliveries. This showed the firm did have behavioral control over the worker's services. It was the firm that provided the truck and incurred all expenses to keep the truck on the road which demonstrated the firm had the financial investment. The fact the firm was responsible to collect the amount they charged to the customer showed the firm had the potential to suffer a significant loss for lack of payment. The fact the worker assisted a driver and performed services as a driver to make deliveries according to the firm's agreement with their customer showed 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 for further information.

Firm: Publication 4341

Worker: Notice 989