

# SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.137 Truck 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

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The worker initiated the request for a determination of his work status as a truck driver in tax year 2014. The firm's business is described as a trucking and transportation corporation.

The firm's response was signed by a firm member. The firm's business is described as an over-the-road trucking company. The worker performed services as a driver; driving with a trainer ██████████ delivering loads.

According to the firm, the firm paid for driving school for the worker; once the driver completed training he would be in his own truck with a lease-purchase arrangement. The loads are chosen by driver once training was complete. The customer or agent give instructions as to the delivery. Any problems encountered by the worker were directed to the firm for resolution. The hours of work depended on the load, how far it was going and how long it would take to get there. The worker is not required to perform the services personally.

The worker responded that he was given specific training and instructions as to how to secure loads, which routes to use, start and stop times, and when and where to refuel. The job assignments came from the firm; and it was the firm that determined the methods by which the worker's services were performed. He concurred that the firm was responsible for handling any problems or complaints encountered by the worker. The services were rendered on the road. He stated that he was required to perform the services personally; any additional personnel were hired and paid by the firm.

Both parties acknowledged the firm provided the truck; the worker indicated the firm provided trailer, fuel, chains, binder, and straps. The worker furnished nothing; he did not lease equipment and did not incur expenses in the performance of the job. The firm and worker stated the worker was paid a percentage of net proceeds of the load; the customers paid the firm. The worker indicated he was not at risk for a financial loss unless he was injured. The firm indicated that the customer who needs the product moved established the level of payment.

The firm and worker and firm agreed that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

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## Analysis

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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.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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. "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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

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.