

SS-8 Determination—Determination for Public Inspection

Occupation

DVC - Drivers & Vessel Control

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:**Facts of Case**

The worker is seeking a determination of worker classification for services performed for the firm as a driver from October 2025 until December 2025. The worker filed a Form SS-8 because they are seeking a determination of worker classification for the services they performed for the firm.

The worker believes that they were an employee of the firm because the firm determined when to start and stop work, instructed the worker daily, had financial control and set the worker's pay, and prohibited the worker from performing services for others during the same hours. There were no written or verbal agreements between the parties. The worker provided a statement of facts concerning the work relationship, correspondence between the parties, a copy of their completed W-9 they state was completed under duress, photos of company-owned trucks, and an ACH deposit form for a subcompany related to the firm.

The firm states that they provide testing and training facilities for research and development testing, evaluation, and training events. The worker provided services for the firm as a truck driver, transporting equipment and parts from various operating sites and locations and occasionally performing manual labor on the firm's premises. The firm classified the worker as an independent contractor because the worker approached the firm seeking employment, the firm agreed to provide work to the worker as an independent contractor at a set daily rate, and the worker agreed to the proposed arrangement. There were only verbal agreements between the parties. The firm attached copies of invoices from the worker to the firm.

The firm states that they did not provide training to the worker because the worker had knowledge, the requisite driver's license, and prior experience required to perform their job. The supervisor gave the worker job assignments in person, over the phone, and through text messages. The worker determined the methods for loading equipment and executing deliveries. If the worker encountered any problems or complaints, they were required to contact the supervisor for problem resolution. There were no reports required of the worker. Services were performed as needed hauling equipment and parts to various locations, including firm operating sites. The firm did not require the worker to attend meetings but required the worker to perform services personally. The worker could not hire helpers or substitutes and was not responsible for their payment. The firm had to approve all hiring. The worker states that the firm instructed them on equipment operation and locations. The construction supervisor for the firm gave the worker job assignments in person, by phone, and through text messages, determined the methods by which job duties were performed, and assumed responsibility for problem resolution. Services were performed as scheduled on the firm's business properties. The firm required the worker to attend safety meetings and to perform services personally. Helpers were other employees subcontracted within the firm. The worker had no hiring authority.

The firm states that they provided the vehicle, equipment, and tools. The worker did not provide anything and did not lease any space, facilities, or equipment. There were no job-related expenses incurred by the worker. Customers paid the firm. The firm paid the worker a daily rate of pay with no access to advance pay. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided the haul truck, trailer, dump truck, front end loader, road roller, forklift, and backhoe. The worker only provided the CDL driver license and had no job-related expenses. The worker had no exposure to financial risk or loss while working for the firm. The firm set the price of products sold and rate of pay for services performed.

The firm states that there were no benefits provided to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The firm did not know if the worker advertised their services to the public. The firm did not represent the worker to customers. Services were performed under the firm's name. The firm ended the work relationship. The worker states that they did not perform similar services for other firms or advertise their services to the public. There was a non-compete agreement between the parties regarding a conflict of interest, prohibiting the worker from performing similar services for other firms. The work relationship ended when the firm stated that there was no work available for the worker.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the firm's customer needs, provided job assignments to the worker on a regular basis, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. As stated by both parties, the worker had no financial risk in the performance of their job duties or any job-related expenses. The firm provided major equipment and all necessary tools. Based on the daily rate of pay arrangement the worker could not realize a profit or incur a loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.