

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 truck driver from January 2025 until February 2025. The worker filed a Form SS-8 because despite being classified as an independent contractor, they functioned as an employee of the firm, resulting in an incorrect payroll tax burden.

The worker believes that they were an employee of the firm because their job duties were identical to other employees, they secured company-assigned loads on company tractor trailers to delivery to the firm's customers, and they were given an employee handbook that laid out the firm's expectations for W2 employees. The worker attached a copy of the handbook for our consideration. The verbal agreement between the parties was that the worker would use a company tractor trailer, fuel card, and toll transceiver to deliver materials to the firm's customers.

The firm states that they are a small trucking company that pays all of their workers as independent contractors. The worker performed services for the firm as a subcontracted driver, hauling freights offered by the firm from one location to another. If the worker did not accept the job, it would be offered to the next driver. The firm classified the worker as an independent contractor because the worker would decide if they wanted to work and make money or not and the worker was fully aware that they would be classified as an independent contractor. The firm attached a copy of the worker's job application, a signed copy of the worker's "Certification of Compliance with Drivers License Requirements", a driver record card and accident history report, the records request for the worker's driving safety performance history, and a medical examiner's certificate for the worker.

The firm states that they instructed the worker on how to use the E-log. As the worker held a CDL, they knew how to operate the equipment. The firm owner would offer the worker job assignments in person, over the phone, and through text messages. The firm owner or an alternate party would determine the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm owner. The firm owner or the worker would be responsible for problem resolution. The firm required the worker to sign the E-log daily. Services were performed as available at customer locations 50% of the time and on roads and highways 50% of the time. The firm did not require the worker to attend meetings or to personally perform services. The worker could not hire helpers or substitutes and was not responsible for their payment. The firm does not hire owner operators. The worker states that the firm provided them with an orientation to the tractor trailers, instructed them on how to use a trailer cover, and trained them on how to secure loads. The firm owner gave the worker job assignments by text messages, determined the methods by which they were performed, and assumed responsibility for problem resolution. Services were performed as scheduled at customer locations. The firm required the worker to attend safety meetings and would penalize the worker if they did not attend. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided the semi-trucks as well as the trailers. The worker would provide personal items as needed. The worker did not lease any space, facilities, or equipment or have any job-related expenses. The firm would reimburse the worker for tolls as requested. Customers paid the firm. The firm paid the worker a percentage rate and gave the worker access to advance pay on a weekly basis up to a certain amount. 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 an 18-wheel tractor trailer, diesel fuel, maintenance, and a toll transceiver. The worker did not provide or lease anything and had no job-related expenses. The firm paid the worker a percentage of the contracted load fee agreed upon between the firm and the shipper. The worker had no exposure to financial risk or loss while working for the firm.

The firm states that they provided the worker with insurance benefits, personal days, and holiday bonuses. 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 or advertise their services to the public. There were no non-compete agreements in place between the parties. The firm did not represent the worker to customers. Services were performed under the firm's name. The worker ended the work relationship because they did not like being paid as an independent contractor. The worker states that they did not provide similar services for other firms. The work relationship ended when the worker quit.

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.

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 services performed by the worker were integral to the firm's business operation as a trucking business. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, determined how jobs would be performed, and was contacted 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. Based on the percentage pay arrangement determined by the firm owner, 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. The firm offered the worker benefits. 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.