

**SS-8 Determination—Determination for Public Inspection**

Occupation 09NHA Newspaper Handlers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 firm is in the business of operating a newspaper delivery service. The worker was engaged as a route driver who picked up papers at the warehouse and delivered them to stores. He received a Form 1099-MISC in 2017 for his services; he also provided services in 2016 and 2018 as well. There was no written, signed agreement between the worker and the firm.

There was no training. The worker drove the same route every day and any particular instructions were left with the route by the firm's supervisor. The firm noted that it left instructions as to what stores to deliver to and what time to pick-up papers. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The firm noted that the worker chose the routes he wants. The worker submitted weekly sheets in order for bills to be made out, though the firm indicated that there was no reports. The worker started early in the mornings, went to the warehouse, picked up papers, stuffed and set up route with newspaper and route sheets, left the office, delivered along route, until he was finished. He worked at the firm's location and from his car. The worker was required to provide the services personally with only the firm hiring and paying any substitutes; the firm disagreed.

The firm provided the straps, plastic bags and warehouse. The worker supplied a car and bags. Another company supplied the newspapers and draws. The firm did not reimburse for the worker's expenses. Both parties agreed that the worker was paid a salary and had no other economic risk; even though the firm initially noted he was paid piece work and could incur auto problems. Both parties agreed that the customer paid the firm. The worker did not establish the level of payment for services; the firm disagreed.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The firm noted that the worker did not act as an agent of the firm. The relationship has ended.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm obtained the customers as well as created and organized the routes. The worker received his route assignment from the firm. He had prior experience in this line of work. The route directed the driver where to go, and the nature of newspaper delivery itself mandated certain time parameters. 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. The worker reported to the warehouse to package the papers according to the draw and route, all while allowing for timely deliveries to the customers. The worker provided his services to the firm throughout a number of years on a continuous basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. The firm provided all the materials, supplies and place to work in addition to the newspapers. It is acknowledged that the worker used his personal vehicle to perform his services for the firm. Most workers have vehicles. The worker had no other significant investment. 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. In addition, the worker's was paid a set weekly salary, based on an hourly rate of pay. 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.

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. There were no benefits and no written agreement. The worker was engaged as a delivery driver for the firm's newspaper delivery business. When doing so, the worker was not engaged in a separate business venture. He did not purchase the papers nor get paid by the customers nor make a commission based on sales. The fact that he had experience and used his personal vehicle, did not make him self-employed. 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.

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 see Publication 4341 for guidance and instructions for firm compliance.