

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

Occupation 09DVC Drivers & Vessel Control	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**

Information provided finds the firm is a trucking business that transports materials such as dirt, rock, demo materials etc. The worker performed services as a truck driver from 2011 through 2013. Filing information shows the worker has performed services for the firm for 2009 and 2010 and also received Form 1099-MISC. The firm reported the income on Form 1099-MISC. The firm stated they felt he was an independent contractor as he was paid a percentage of the truck earnings, and was not paid by the hour. Both the firm and worker indicated work assignments were given via text or phone. The worker would provide weekly load reports. The worker indicated he would also report if he broke down or had a flat tire etc. The firm indicated there was no set schedule. the worker indicated he performed services Monday through Saturday five am to seven pm, occasionally on Sundays. The firm indicate he worked off of a percentage, work changed daily according to his performance. Services were performed at various locations. He was required to perform services personally.

The firm indicated they provided no equipment or supplies. the worker stated the firm provided the fuel, trucks, tires and all supplies and equipment. The firm indicated the worker was paid on commission. The worker stated by the load and by the ton. Both agreed the customer paid the firm. the firm indicated the customer and the contractor determined the level of payment of services. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicate he was represented as a sub-contractor. The worker indicated he was represented as an employee of the firm. Both agreed the worker quit.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

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## Analysis

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We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. If the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

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. In the instant case, the worker was paid a percentage of the load delivered, as is customary in the trucking industry. The worker drove the firm's truck to make the assigned deliveries. This indicates the firm maintained financial control in and over their equipment, would have been the party to suffer a financial loss for damage to such equipment. The customer paid the firm for the services delivered and/or materials removed.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## 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. The worker performed services in order determined by the firm. The worker drove equipment that belonged to the firm. Whether he was paid a percentage of the load, or by the hour, he was not in a position to incur a profit or suffer a financial loss. This is verified by the fact, he worked for the firm, delivered to the firm's customer, in the order instructed. He had no financial investment in the business or the equipment utilized. The customer paid the firm for the services received.