

**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

**Facts of Case**

The firm is in the business of transportation services. The worker provided his services to the firm as a bus driver with services which included transporting children to and from school or daycare, and adults to and from different events in 2014 through 2015 and received the Form 1099-MISC in 2015 for these services.

The worker stated that there was no training required because he had his CDL license. The worker received his assignments via email, phone or personally from the firm and the firm determined the methods by which the assignments were performed. The firm contends that the worker determined the methods by which the assignments were performed. Both parties agreed that if problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm stated that the worker arrived at the firm's garage one hour prior to the scheduled pick up to perform a vehicle inspection. He then ran the assigned route and returned to the firm's garage. Additionally, the firm expressed that although the workers routine varied, he worked mostly 3:00AM and 3:00PM hours. The firm confirmed that the worker provided his services personally after picking up the vehicle at the firm's garage and completing his assigned route. The worker indicated that the firm would call to let him know when he was in town and sometimes they would have meetings. The worker maintains that if additional help was required, the firm hired and compensated the helpers.

The firm provided the vehicle and fuel the worker needed to provide his services. The worker did not lease any equipment nor were any business expenses incurred in performance of his services. The worker was paid by the route for his services. The firm's customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker. The worker maintains that he did not perform similar services for others during the same time period. The worker performed his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability.

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**Analysis**

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**FINDING: Employee:** The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered his services personally. 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. The worker's services were under the firm's supervision.

The firm provided the worker with the vehicle and fuel. 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. His pay was based on an hourly rate. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Either the firm or the worker could terminate the agreement. The relationship ended because the firm went out of business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.