

# SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.69 Truck Driver	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input type="checkbox"/> None <input type="checkbox"/> Yes

## Facts of Case

The firm is a trucking business, and the worker was engaged to perform services as a driver to haul loads for the firm's customers. The parties indicated that the worker's truck and trailer equipment were leased on to the firm, however there was no information provided for this case to evidence a valid lease agreement between the parties.

The worker was required to follow all guidelines of the Federal Motor Carrier Safety Administration and the DOT. Instructions were given on how to complete the firm's documents. The worker called dispatch to state that he was available, and he would then be put in rotation on a first call first load basis. The worker and the firm's customer determined the work methods to be used to perform the services. Any problems the worker and customer could not resolve were reported to the firm for resolution purposes. The worker was required to perform his services personally. He was required to provide the firm with hours of service driver logs, vehicle inspections as required by FMCSA/DOT. The worker was required to attend safety/DOT meetings that were offered per the firm's DOT requirements.

The firm provided the daily vehicle inspection reports, waybills for each run, and first set of company magnets for the truck. The worker provided log books, and all other items required by DOT (safety triangles, fire extinguisher, first aid kits, spare fuses). Trailers were leased to drivers on an as needed basis. The worker incurred expenses for cost of fuel, truck repairs, log books, and tolls. No expenses were reimbursed by the firm. The worker did not incur economic loss or financial risk with regard to the services he performed for the firm. The firm paid the worker on a commission basis for his services, and allowed for advances regarding fuel and major repairs. The firm received payment from customers for services rendered.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker was not able to perform similar services for others while engaged by the firm as his trucking equipment was leased to the firm, and covered under the firm's insurance policy. The worker relationship was continuous as opposed to a one-time transaction.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker leased his trucking equipment to the firm for its use, and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes.