

SS-8 Determination—Determination for Public InspectionOccupation
09DVC DriverDetermination:
☒ 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 firm is in the business of transporting cars. The worker was engaged as a driver to pick-up and deliver cars. He eventually received a corrected 2016 Form 1099-MISC for his services. There was no written, signed agreement between the parties.

The worker indicated that the firm told him which cars to load onto the trailer for hauling. The firm agreed that the worker received his work assignments from the firm via an app. In this case, each party indicated that the other determined the methods by which the assignments were performed and would be responsible if any problems or issues arose. The firm required no reports but the worker completed a firm-purchased logbook for the DOT as well as trip reports (financial transactions.) The worker noted that he reported to the firm's site on Tuesdays, received instructions, loaded cars onto the trailer, drove until Saturday evening, and reported back to the firm's site to drop off the truck. The firm indicated that the worker agreed to the pick-ups and drop-offs and controlled what day he left. Both parties agreed that the worker picked-up/dropped off vehicles at firm-designated locations; then returned the truck to firm. Both also agreed that the worker was to provide the services personally; however the firm also indicated that the worker would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided the truck and trailer (leased by the firm); the worker also added that cargo straps and fuel were provided as well. The worker supplied gloves and small tools. He also incurred personal expenses at truck stops; fuel was purchased with the firm's credit card. Both parties agreed that the worker was paid a commission with the firm indicating that it was percentage of the gross. Both also indicated that the worker was responsible for any cargo damages. The firm indicated that the customer could pay either party; the worker disagreed - only the firm was paid. Both agreed that the worker did not establish the level of payment for services; the firm indicated that an outside broker did.

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 provide similar services for others. He performed his services for the firm under the firm's name. The work relationship has ended. The worker indicated that he quit; the firm noted that the relationship ended due to decreasing loads.

Analysis

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 worker did not require training. The firm obtained the vehicle transportation jobs and informed the worker via an app when there was work. Once the worker agreed to the assigned job, he was to report to the firm, pick up the truck, load the vehicles and deliver them per the firm's instructions. It is acknowledged that the firm did not provide direct supervision as the worker performed most of his services on the road, to and from his destinations; however, the firm retained the right to control the order or sequence of work, sufficient to indicate an employer-employee relationship. Other elements to consider that indicate an employer-employee relationship would be the fact that the worker was to provide the services personally as well as the fact that his services were continuous throughout the time period involved. It was understandable that as the driver of the firm's leased vehicle that the firm cared about who and how this vehicle was utilized as the firm remained responsible. In addition, from information provided, the worker's services illustrated the continuing relationship between the worker and the firm, also indicating 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker was paid a commission that was a percentage of the gross load, according to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. It was the firm that provided the truck and trailer as it leased the equipment. While payment by the hour is a strong indicator of an employer-employee relationship, there are many workers who are employees and paid a commission; therefore, all the factors of the work relationship were considered.

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 there was no written agreement. The worker was engaged as truck driver for the firm's vehicle transportation operations. When driving the firm's leased truck, the worker was not engaged in a separate business enterprise. His services as a truck driver were essential to the firm's continuing 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 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.