

Worker Classification

Information from OWWL.

Worker classification (1099 vs. W-2) is a *big deal* in New York. The IRS, NY Department of Labor, and even the Department of State can all have different takes on it. Misclassification can lead to penalties, so it's smart that you're thinking carefully here.

The Core Difference

- **W-2 (Employee):** The business controls *how* the work is done — tools, supplies, methods, schedule, etc. Employer withholds taxes, pays into unemployment insurance, workers' comp, etc.
- **1099 (Independent Contractor):** The worker runs their own business. They control *how* the work is done, bring their own tools, and generally can take other clients. They invoice you, and you don't withhold/pay payroll taxes.

How Agencies Decide

Both the IRS and New York use a “**right to control**” test, but NY tends to be stricter.

Key factors they'll look at:

1. **Behavioral control:** Who decides how the work is performed?
 - If you're providing supplies and expect the work done to your standards, that leans *employee*.
 - If she brings her own supplies and methods, more *contractor*.
2. **Financial control:** Who bears the financial risk?
 - Contractors can profit or lose based on how they manage their business (e.g., supplies, pricing multiple clients).
 - Employees just get paid wages.
3. **Relationship of the parties:**
 - Written contract matters, but so does reality. If she looks like staff, she probably is.
 - If you expect her to only work for you, that's employee. If she works for many, that's contractor.

Applying to Our Cleaner

- **She sets her own hours** → contractor-like.
- **You provide supplies/tools** → employee-like.
- **You're having trouble paying her "on time"** → suggests we're treating her *like payroll anyway*.

If she only works for us, uses our supplies, and we control the standards of cleanliness, she's more likely a **W-2 employee** under NY standards.

Why Moving Her to Payroll Might Be Best

- **Compliance:** You avoid misclassification risk (NY is aggressive about audits).
- **Simplicity:** Payroll ensures timely, regular payments.
- **Protections:** She'd get unemployment insurance and workers' comp coverage — which NY requires for employees.

The only downside is a higher cost for you (payroll taxes, workers' comp premiums). But the flip side is peace of mind and fewer compliance headaches.

Next Step: You can use the **IRS Form SS-8** (Determination of Worker Status) if you want an official ruling, but it takes time. Many employers in your spot just move cleaners to payroll to be safe.