



Employee Misclassification

Employee (W2)

Independent Contractor (1099)

Misclassification Task Force



Governor Murphy's Misclassification Task Force

- Chaired by the NJ Department of Labor, with combined representatives from the Departments of Agriculture, Economic Development, Human Services, Transportation, Treasury, and the Attorney General's office works in a collaborative effort on strengthening misclassification enforcement.
- By misclassifying workers as independent contractors – workers who file 1099s, not W2s – employers avoid paying unemployment and disability taxes, costing state and federal taxpayers untold millions of dollars.
- In New Jersey alone, auditors have identified more than \$80 million in underreported employer contributions since 2010.

A Side-by-Side Comparison Employee vs. Independent Contractor



Employee

To be classified as an Employee of a company, the worker will:

- Receive a W2 which includes
 - ✓ W2-Includes wages and withholding
 - ✓ W2-includes Withheld Federal & State taxes, Social Security, Workers Comp and Unemployment
- Employee is paid hourly or salaried
- An Employee's hours for work performed will be captured on the Certified Payroll of the Reporting Company that hired them.
- The Employer will report Prevailing Wage requirements on behalf of the (W2) Employee
- Labor Compliance reporting is not the responsibility of the Employee, but submitted through the Employer

Independent Contractor

To be classified as an Independent Contractor, the worker:

- Also Known As the 1099 worker
- Receives a 1099 for taxes to be paid by the worker and not the employee
- Is paid based on contract
- Earned income with no withholding
- Expectation of annual payment to Federal & State Government
- The Independent Contractor prepares and reports workhours on a Certified Payroll for work performed
- All Labor Compliance requirements (e.g. AA,PW) are reported by the Independent Contractor as a registered contractor for the project

Classifying an W2 Employee / Independent Contractor (1099)



What is a Misclassified Worker?

- Misclassification occurs when workers are mislabeled as independent contractors vs regular employees.
- Misclassified Workers do not have legal protections of Wage and Hour laws, Unemployment, and Workers Comp
- Unemployment, Workers Comp, other legally required withholdings not taken out.
- Employer must repay all withholding, back taxes and penalties for misclassified workers.
- Misclassification is a form of tax evasion and may result in costly financial penalties

Tax Responsibilities W2 Employee / Independent Contractor (1099)

The logo for NJEDA, featuring the letters 'NJEDA' in a bold, sans-serif font with a stylized 'J' that incorporates a dollar sign.

What are the differences in Withholding?

- For employers, determining the classification status of employees and clearly communicating this status is important for maintaining understanding between the parties and clarifying expectation in terms of taxation.
- Understanding the difference in tax payment accountability between a full time (W-2) and contract (1099) employee is important because the responsibility for withholding and paying taxes is different but the individual responsibility for payment is the same.
- The employee with a 1099 is entirely responsible for determining and withholding the appropriate amount from their pay, so that they can pay the state and federal government what they owe.

A graphic containing social media contact information for NJEDA. It features the NJEDA logo in the top right corner. On the left, a green circular graphic contains the text 'Visit NJEDA.com'. In the center, the text '@NewJerseyEDA' is displayed in green. Surrounding this text are four social media icons: LinkedIn (top left), Twitter (top right), and Facebook (bottom center), all in white on blue square backgrounds.