

New Jersey is NOT Replacing the ABC Test for Independent Contractor Status

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On October 1, 2026, New Jersey is adopting detailed regulations explaining how the New Jersey Department of Labor (NJDOL) will interpret and enforce the ABC test. Those regulations will make it harder to classify workers as independent contractors.

The ABC test begins with every worker being presumed to be an employee unless the company proves all three of the following parts.

A. Freedom From Control: The worker must truly control how the work is done.

B. Outside the Usual Business: The work must either be outside the company's normal business, or be performed outside the company's places of business.

C. Independent Business: The worker must operate an independently established business that can survive without that one client.

The new regulations do not create a new legal test. Instead, they:

- define terms more aggressively,
- add detailed factors NJDOL inspectors will use,
- reduce reliance on labels/contracts,
- emphasize "real-world practice" over paperwork, and
- codify interpretations that many businesses say are stricter than prior practice.

To classify individuals as independent contractors businesses often rely on:

- independent contractor agreements,
- the LLC status of the worker,
- compensating with a 1099,
- business insurance purchased by the worker, and
- professional licenses held by the worker.

These help, but they are not the only factors considered. The new regulations explicitly state that those factors alone are not enough to prove independent contractor status.

Criteria A (Freedom From Control)

The NJDOL will focus on actual working conditions. Regarding Criteria A, a person may have a LLC and sign an independent contractor agreement, but if the company controls schedule, pricing, procedures, and assignments, NJDOL may still classify the person as an employee. Factors that weigh toward employee status include:

- required schedules,
- mandatory meetings,
- performance monitoring,
- dress codes,
- restrictions on outside work,
- discipline systems,
- required software/apps,
- pricing set by the company, and
- mandatory training.

So even if someone “chooses their hours,” other controls may cause the still fail Criteria A.

Criteria B (Outside the Usual Course of Business)

Criteria B will also become tougher. The rules provide more detailed guidance on:

- what counts as the company’s “usual business,”
- what counts as a “place of business,” and
- and when work is considered integral to the company.

It will make having independent contractors more difficult for industries where contractors perform the company’s core service, such as:

- trucking,
- delivery,
- salons,
- home healthcare,
- construction,
- staffing models, and
- financial sales organizations.

For example, a roofing company that hires roofers as 1099s will find it harder to defend the independent contractor status because roofing is the company’s core business.

Criteria C (Independent Business)

The regulations emphasize that the worker must have an independently viable business. The factors include:

- multiple clients,
- advertising,
- separate business location,
- investment risk,
- ability to continue after relationship ends, and
- independently obtained customers.

An individual working full-time for one company with no outside business activity becomes much harder to classify as a contractor.

What Should Your Business Do Next?

Do not rely on contracts or labels alone. The NJDOL will be focused on how the relationship actually works.

Now is the time to review your independent contractor arrangements, identify higher-risk roles, and address any gaps between your agreements and day-to-day practices.

If you're unsure where you stand, our Employment Law Team can help assess your current classifications and outline practical options before the new regulations take effect. Call us today to discuss your situation.

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