

## **NJ DOL Proposes New Rules Clarifying the ABC Test for Independent Contractors**

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The New Jersey Department of Labor and Workforce Development (NJDOLE) recently issued [proposed regulations](#) aimed at clarifying how employers should apply the “ABC test” to determine whether a worker is properly classified as an employee or an independent contractor. The ABC test is used under New Jersey law to enforce wages, benefits, and labor protections, and misclassification can result in significant financial penalties for employers.

### **What Is the ABC Test?**

The ABC test is a legal standard that places the burden on the employer to prove that a worker is an independent contractor as opposed to an employee. Employers must satisfy all three of the following criteria for an individual to be considered an independent contractor:

- (A) The individual is free from control or direction over the performance of the work;
- (B) The work is performed outside the usual course of business or outside the business’s physical location; and
- (C) The individual is engaged in an independently established trade, occupation, profession, or business.

### **What Is Changing?**

The proposed regulations are not creating a new standard, but they do elaborate on how each part of the ABC test should be interpreted, essentially summarizing case law interpreting the ABC test. Below are examples of the kinds of clarifications included in the proposal:

#### **Prong A: Control or Direction**

The proposed rules clarify that in order for an employer to meet its burden under this prong, the employer must establish not only that it does not exercise control over a worker, but also that it does not retain the right to control the manner or means of the work. Some of the factors considered under this prong include, but are not limited to:

- Whether the individual is required to work any set hours or jobs;
- Whether the putative employer has the right to control the details and means by which the services are performed by the individual;
- Whether the individual’s rate of pay is fixed by the putative employer; and
- Whether the putative employer provides training to the individual.

Employers should review the proposed regulations for the full list of factors, as the above list is not intended to be exhaustive.

### **Prong B: Outside the Usual Course of Business**

The employer satisfies this prong if the worker's services are not part of the company's typical business activities, or if the work occurs at a location unrelated to the business. For example:

- A law firm hiring a landscaper;
- A dentist hiring a cleaning service; and
- A restaurant hiring a band for live music.

However, examples that would likely **not** satisfy this prong include:

- A ride-share company hiring drivers;
- A drywall company hiring a drywall installer; and
- A country club hiring golf caddies.

The regulations also clarify that a "place of business" may include non-traditional worksites, such as homes, vehicles, or remote settings, if core business functions occur there.

### **Prong C: Independently Established Business**

Under this prong, the worker must be independently engaged in a trade or business. Some factors considered under this prong include, but are not limited to:

- The duration, strength, and viability of the individual's business (independent of the putative employer);
- The number of customers of the individual's business and the volume of business from each respective customer;
- Whether the individual sets their own rate of pay; and
- Whether the individual advertises, maintains a visible business location, and is available to work in the relevant market.

Importantly, receiving a 1099 tax form or having a professional license does not automatically satisfy this requirement of the ABC test.

### **What Should Employers Do?**

Employers should:

- Review current worker classifications under the updated guidance;
- Examine contractor agreements and work practices to ensure they meet all three prongs of the ABC test;
- Submit comments to the NJDOL if they believe the proposed rules could have unintended effects on their industry; and
- Consult legal counsel for a risk assessment and guidance on compliance strategies.

Although the proposed regulations do not carry the force of law until adopted, they provide important insights into how the NJDOL will approach enforcement going forward.

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If you have any questions regarding the recently issued proposed regulations, please feel free to contact [DanaLynn T. Colao](#) or [Vincent C. Cirilli](#) of Saiber LLC's Employment & Labor Law practice.