

# LABOR AND EMPLOYMENT INFORMATION MEMO

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## New Jersey Clarifies Independent Contractor Classification Through Final ABC Test Rules

On May 5, 2026, the New Jersey Department of Labor and Workforce Development (the Department) adopted final regulations clarifying the application of the ABC test for determining whether a worker is an independent contractor or an employee (N.J.A.C. 12:11). Effective Oct. 1, 2026, the rules do not create a new test; rather, they formalize how the Department expects employers to assess and defend independent contractor classifications and underscore the Department's substance-over-form approach.

The ABC test governs worker classification under the New Jersey Unemployment Compensation, Wage and Hour and Wage Payment Laws. The regulations apply across multiple laws the Department administers or enforces, including the New Jersey Temporary Disability Benefits Law, Earned Sick Leave Law and Call Center Jobs Act.

### What the Final Rules Emphasize

To classify a worker as an independent contractor under New Jersey law, the presumed employer has the burden of proving that all three prongs of the ABC test are met.

### The ABC Test

**A)** The worker has been and will continue to be free from control or direction over the performance of services, both under the worker's contract of service and in fact;

**B)** The work performed is either outside the usual course of the business for which the work is being performed, or the work is performed outside all the places of business of the enterprise; and

**C)** The worker is customarily engaged in an independently established trade, occupation, profession or business.

### Prong A

The rules call for a totality-of-the-relationship analysis and identify common indicators of control, including set hours or assignments, control over how work is performed, personal service requirements, pay set by the company, lack of worker risk of loss, on-call obligations, restrictions on outside work and training provided by the employer.

### Prong B

The rules state that a company's usual course of business can include activities it regularly performs to generate revenue or to develop, produce, sell, market or provide goods or services. Places of business include locations where the enterprise has a physical plant or conducts an integral part of its business. A worker's home office is not the employer's place of business, which is a helpful clarification for remote freelancer arrangements.

## **Prong C**

The rules focus on whether the worker is operating a real, independently established business. Factors include the business's duration and viability, customer base, relative income from the putative employer and other sources, number of employees and investment in tools, equipment, vehicles, infrastructure and similar resources. These factors are not exhaustive. Multiple jobs, outside work, licensure, business registration and insurance alone are not enough.

The rules emphasize substance over form. Neither an agreement labeling a worker an independent contractor nor a Form 1099 controls. The Department may consider who drafted the agreement, whether it was negotiable, whether one side could make unilateral changes and whether the agreement was terminable at will. Employers therefore should not rely on independent contractor labels where the actual working relationship reflects employee-like control.

## **What Employers Should Do Now**

The Department explains that the rulemaking is intended to help businesses assess classification before a worker complaint or claim leads to an audit or investigation and to reduce exposure for unpaid contributions, unpaid wages, interest, penalties and related litigation costs.

Before Oct. 1, 2026, employers using contractors should review relationships involving core revenue-generating services, reporting, training, scheduling, non-compete restrictions, remote freelancer arrangements and workers who depend on a single company for income. Employers should update agreements and day-to-day practices to reflect independence and document facts showing that the worker operates a viable business independent of the relationship.

As a practical matter, independent contractor arrangements are likely to face greater scrutiny where the worker performs the same services as the business sells, where the company sets the worker's schedule and where the worker relies on the company for most of their income.

In short, the final rules do not change New Jersey's ABC test, though they codify a more exacting, substance-over-form framework for applying the test across a broad range of employment laws. For employers with significant contractor populations, now is the time to conduct contemporaneous classification analyses and align agreements, supervision practices and supporting documentation with the facts needed to show genuine business independence.

Employers are encouraged to consult with counsel to understand how these changes affect their operations and to ensure policies are compliant and strategically aligned. If you have any questions or would like additional information, please contact [Jason Kaufman](#), [Mallory Campbell](#), [Rachel Kreutzer](#) or any attorney in Bond's [labor and employment practice](#) or the attorney at the firm with whom you are regularly in contact.

