The ABC Test: NJ Adopts New Regulations for Determining Independent Contractor Status

Client Alert

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What You Need to Know

- The New Jersey Department of Labor and Workforce Development (NJDOL) has adopted new regulations impacting the "ABC test" used to determine independent contractor status.
- The regulations, which become effective on October 1, 2026, will apply to New Jersey's Unemployment Compensation Law, the Wage Payment Law, and the Wage and Hour Law, among other statutes.
- Employers are urged to evaluate their current worker classifications against the prongs of the ABC test to avoid future liability issues or a potential NJDOL audit.

By: Irene Hsieh

On May 5, 2026, the New Jersey Department of Labor and Workforce Development (NJDOL) adopted new regulations impacting the statutory ABC test for determining whether a worker is classified as an independent contractor or employee. The regulations will be published on June 1, 2026, and will take effect on October 1, 2026.

Under the new regulations, the ABC test will apply to statutes and rules in which the issue of independent contractor status depends on its application, including the New Jersey Unemployment Compensation Law, the New Jersey Wage Payment Law, and the New Jersey Wage and Hour Law. According to the NJDOL, the regulations "synthesize decades of court decisions, including the New Jersey Supreme Court's unanimous ruling in *East Bay Drywall, LLC v. Department of Labor* (2022), and its landmark decision in *Carpet Remnant*

Warehouse, Inc. v. NJ Department of Labor (1991)."

Under the three-pronged ABC test, the putative employer bears the burden of establishing independent contractor status, as follows:

- **Prong A:** the putative employer does not exercise control or direction over the individual's work, and it does not reserve the right to control or direct the individual's work
- **Prong B:** the putative employer must establish that the individual's services are outside the putative employer's usual course of business or that such services are performed outside of all of the putative employer's places of business
- **Prong C:** the putative employer must establish that the individual is customarily engaged in an independently established trade, occupation, profession, or business

Given the 120-day lead time before these regulations take effect, there may still be opportunity for statutory adjustments that will likely be spearheaded by business groups objecting to the regulation of independent contractors, who believe such oversight could have significant negative impacts on the gig economy in New Jersey. Regardless of the outcome of the 120-day period, it is clear that the ABC test will become critical to compliance with various New Jersey statutes and NJDOL rules.

Next Steps

New Jersey-based employers that engage the services of independent contractors would be prudent to consult with counsel on questions regarding worker status, and should take steps now to evaluate their existing independent contractor classifications against the prongs of the ABC test to avoid future liability issues, including a potential NJDOL audit. Please contact the author of this Alert for more information or to discuss your specific business circumstances.

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