ECKERT SEAMANS
ATTORNEYS AT LAW

July 2026

Labor & Employment Update

Easy as ABC? New Jersey Refines Independent Contractor Test

By Margaret C. King

On June 1, 2026, the New Jersey Department of Labor and Workforce Development ("NJDOL") published regulations clarifying the test for determining whether a worker is an employee or an independent contractor. Under the statutory scheme known as the "ABC test," a worker in New Jersey is deemed an employee unless the following conditions are met:

A. The individual has been and will continue to be free from control or direction over the performance of work performed, both under contract of service and in fact; and

B. The work is either outside the usual course of the business for which such service is performed, or the work is performed outside of all the places of business of the enterprise for which such service is performed; and

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

New Jersey Unemployment Compensation Law § 43:21-19(i)(6)(A)–(C).

The new regulations, which take effect on October 1, 2026, address ambiguities in the ABC test that New Jersey courts have navigated for many years. By setting forth specific considerations under each "letter" of the analysis, the NJDOL aims to provide uniform guidance to workers and employers to reduce instances of worker misclassification.

A: Freedom from Control or Direction

In addition to affirming that action taken by an employer to ensure legal compliance is not dispositive of a worker's freedom from control or direction, the regulations provide a non-exhaustive list of other factors to be considered in evaluating part A of the test:

- 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, in consideration of the following, non-exhaustive factors:
- Whether the putative employer requires the individual to use specific tools, supplies, or materials
- Whether the putative employer requires the individual to wear a uniform or to don or display a specific logo, color(s), or other insignia
- Whether the putative employer requires the individual to report on any aspect of the individual's services at prescribed times or intervals
- Whether the services must be rendered by the individual personally

- Whether the putative employer negotiates for and acquires the services performed by the individual
- Whether the individual's rate of pay is fixed by the putative employer
- Whether the individual bears any risk of loss for services performed
- Whether the individual is required to be on call, on standby, or otherwise available to perform services at set times determined by the putative employer, even if the individual does not actually perform services at such times
- Whether the putative employer limits the individual's performance of services for other parties, such as by limiting the individual's geographic area or potential clientele
- Whether the putative employer provides training to the individual

B: Outside the Usual Course of Business and Places of Business

Part B deals with the types of work and places of work that confer employee or independent contractor status. An employer's "usual course of business" is activity regularly engaged in to develop, produce, sell, market, or provide goods or services. An employer's "place of business" includes a physical plant location or places where the employer conducts an integral part of its business. A worker performing services within an employer's usual course of business, at the employer's place of business, is indicative of employee status.

The enduring, post-COVID question of remote work did not go unaddressed by the NJDOL. The regulations provide that a worker's personal residence where they perform remote work is not considered an employer's place of business for purposes of part B.

C: Independently Established Trade

The regulations introduce a non-exhaustive list of factors for evaluating whether a worker is customarily engaged in an independently established trade under part C. These include:

- Viability of the worker's business in their trade, including how many customers and employees they have
- Proportion of the worker's compensation earned from the employer
- Extent of the worker's investment in their trade in the form of tools, equipment, properties, etc.
- Extent of the worker's investment in their trade in the form of tools, equipment, property, etc.
- Maintenance of advertisements and a visible business location

By contrast, a worker's licensure in their field, performance of work for multiple employers, registration of a business entity, and maintenance of their own liability insurance are not, standing alone, dispositive or even necessarily suggestive of independent contractor status pursuant to part C. For example, if a worker obtains separate liability insurance coverage at the suggestion or encouragement of the putative employer, that would not be indicative of an independently established trade.

Federal Considerations

The new regulations spotlight distinctions between the New Jersey ABC test and its federal counterpart. The federal analysis focuses on the "economic realities" of each case in distinguishing employees from independent contractors for purposes of the Fair Labor Standards Act. The U.S. Department of Labor has enumerated six non-exhaustive factors for consideration:

- Opportunity for profit or loss depending on managerial skill
- Investments by the worker and the employer
- Permanence of the work relationship
- Nature and degree of control
- Whether the work performed is integral to the employer's business
- Skill and initiative

Employers can expect to see greater divergence in worker-status determinations between state and federal law with the adoption of the new regulations in New Jersey. The clarity they impart to the ABC test reinforces the existing divide between the respective approaches and will require employers to take due care in classifying workers.

Spelling It Out

The new regulations issued by the NJDOL provide employers with a somewhat clearer roadmap for classifying workers compared with the existing tangle of statutory language and case law. At the same time, the newly adopted regulations highlight tensions between state and federal law in making these determinations. Eckert Seamans is prepared to support employers in reevaluating employee and independent contractor designations to ensure compliance in advance of the October 1st effective date of the regulations, and in navigating the nuances between the federal and state standards that apply.

ECKERT SEAMANS
ATTORNEYS AT LAW