

The NJDOL's Same Old ABC Test In A Shiny New Rule

Labor & Employment Law Alert

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On May 5, 2026, the New Jersey Department of Labor and Workforce Development (NJDOL) filed a notice of adoption for new rules codified at N.J.A.C. 12:11, titled "ABC Test; Independent Contractors." But as the NJDOL emphasized over and over in the 205-page publication, these rules do not create a new test for worker classification, rather, they memorialize the NJDOL's interpretation of the existing statutory "ABC Test" that has governed independent contractor status in New Jersey since 1936 under the Unemployment Compensation Law. The revised rules are an attempt by the NJDOL to provide clear guidance to businesses regarding the application of the ABC Test. Whether the new rule does so, remains to be seen. The new rules will become effective on October 1, 2026.

The ABC test is applied to determine whether a worker is an employee or independent contractor for purposes of:

- The Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 *et seq.*;
- The Temporary Disability Benefits Law (TDBL), N.J.S.A. 43:21-25 *et seq.*;
- The Wage Payment Law (WPL), N.J.S.A. 34:11-4.1 *et seq.*;
- The Wage and Hour Law (WHL), N.J.S.A. 34:11-56a *et seq.*;
- The Earned Sick Leave Law (ESLL), N.J.S.A. 34:11D-1 *et seq.*; and
- The Call Center Jobs Act (CCJA), N.J.S.A. 34:21-8 *et seq.*

The new rule does *not* alter any current statutory exemptions from coverage under, or exemptions from the requirements of, any of the statutes listed above. As always, the burden is on the employer to prove a worker is an independent contractor rather

than an employee. In order to prove a worker is an independent contractor, the ABC Test requires the employer show:

1. It does not exercise control or direction over the individual's work in fact, and that it does not reserve the right to control or direct the individual's work;
2. Either that the individual's services are outside of 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; and
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business.

The test sounds simple but there are dozens of considerations that apply to various parts of the test discussed in the 205-page publication from the NJDOL. In the end, the determination of whether a worker is an employee or independent contractor was highly fact specific *before* the publication of the new rule, and it remains that way *after* publication. That means that regardless of what an employer puts in writing and has an employee sign, the NJDOL will look at the facts and circumstances of the relationship and make its own determination as to whether the worker is an independent contractor or employee.

Do not wait until October 1, 2026 to review your worker classifications. As always, Brach Eichler's Labor and Employment team is available to provide practical and clear advice to clients on the ABC Test and any other labor and employment issues.

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