Relearning the ABCs of Worker Classification in New Jersey

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By: Christopher Scales

New Jersey Department of Labor and Workforce Development (NJDOL) formally adopted new regulations on May 5, 2026, clarifying the application of the State's "ABC test" for determining whether a worker is an employee or an independent contractor.

The final rules — expected to be published on June 1, 2026, and to take effect on October 1, 2026 — do not change the underlying legal standard, but significantly formalize and tighten how the test is interpreted and enforced.

These developments are highly consequential for businesses across industries that rely on independent contractors, including gig economy businesses, professional services firms, logistics providers, and construction companies.

Background: New Jersey's ABC Test

New Jersey has long applied one of the most employee-friendly worker classification tests in the country. Under the ABC test, a worker is presumed to be an employee unless the business can establish all three of the following:

(A) Freedom from Control: The worker is free from the business's control or direction, both contractually and in practice.

(B) Outside the Usual Course/Place of Business: The work is performed outside the business's usual course of business or outside all of its places of business.

(C) Independent Trade or Business: The worker is customarily engaged in an independently established trade, occupation, or business.

Failure to satisfy any one Prong results in classification of the worker as an employee.

Key Features of the Final Regulations

The newly adopted rules are designed to remove guesswork and provide clearer guidance on the application of the ABC test, while incorporating decades of New Jersey case law interpreting that test.

The NJDOL emphasized that the new regulations do not create a new ABC test; rather, the Department adopted the regulations to memorialize its interpretation of New Jersey's existing statutory ABC framework and provide guidance to the regulated community on how that framework is applied.

Codification of Prior Case Law

The new regulations purport to consolidate judicial interpretations of the ABC test to create a comprehensive regulatory framework based on prior case law. The cases — *East Bay Drywall, LLC v. Dep't of Labor & Workforce Dev.*, 251 N.J. 477 (2022) and C*arpet Remnant Warehouse, Inc. v. Dep't of Labor*, 125 N.J. 567 (1991) — illustrated the rigorous application of the ABC test and the need to provide specific, credible evidence to satisfy the test's requirements, especially under Prong C.

Revisions to Prong A

The rules include a business-friendly revision to the Prong A analysis. The new regulations provide that actions taken by a putative employer "solely" to comply with federal, state, or local laws or regulations "shall not, standing alone, be considered evidence of control or direction under Prong A." For example, a business that contracts with an electrician for the provision of electrical work on the business's premises does not violate Prong A by requiring that the electrician wear OSHA-compliant safety equipment, or comply with applicable state and local fire-safety requirements. This change, which is especially helpful for businesses in heavily regulated industries, makes clear that compliance-related measures do not automatically result in classification of a worker as an employee, particularly when the worker is otherwise entitled to broad voluntary control over the work.

Clarifications of Prong B

Prong B, which requires the putative employer to show that the services are either outside the usual course of the business for which they are performed or performed outside all places of business of the enterprise, remains a frequent area of concern for businesses. To provide greater clarity, the regulation focuses the Prong B inquiry on two core questions: whether the work is part of the activities the business regularly performs to generate revenue or to develop, produce, sell, market, or provide goods or services; and, if not outside the usual course of business, whether the work is performed away from all locations where the business has a physical plant or conducts an integral part of its business. For example, a medical supply company that contracts with a plumber for services on its premises almost certainly is not the plumber's employee because the medical supply company is not in the plumbing business.

The NJDOL also addressed an issue that has become particularly significant in the post-COVID-19 workplace: remote work from home. The Department clarified that a worker's personal residence is not treated as the putative employer's place of business simply because the worker performs remote services there from a location not operated by the putative employer.

Narrowing of Common Independent Contractor Defenses

The rules make clear that commonly cited indicators of independent contractor status — standing alone — are insufficient. A few examples include:

- Issuance of a Form 1099 does not establish contractor status
- Holding a professional license is not determinative
- Working for multiple clients does not automatically satisfy Prong C
- A written independent contractor agreement does not override the factual analysis

These clarifications reinforce that the ABC test is a substance-over-form inquiry.

Elimination of Certain Illustrative Examples

In response to substantial public feedback — reportedly thousands of comments — the NJDOL removed specific examples included in earlier drafts of the rule.

While this change reduces perceived rigidity, it places greater emphasis on the fact-specific analysis.

Emphasis on Enforcement Transparency

The regulations aim to provide "transparent enforcement guidelines," signaling continued proactive enforcement against worker misclassification. It remains to be seen whether the new rule will provide the clarity NJDOL aspires to provide.

New Jersey already imposes significant penalties for misclassification, including monetary fines, back wages, and potential administrative or civil liability.

Practical Impact for Employers

The final rules reinforce New Jersey's status as one of the most challenging jurisdictions for maintaining independent contractor relationships. Key implications include:

- **Increased classification risk:** Businesses face a higher likelihood that contractor relationships will be reclassified as employment.
- **Greater compliance burden:** Businesses must conduct detailed, fact-intensive analyses for each contractor.
- **Exposure to liability:** Misclassification can lead to wage claims, tax assessments, penalties, and audits.
- **Operational changes:** companies may need to restructure business models or transition certain contractors to employee status.

Industries with business models built around independent contractor labor should anticipate heightened scrutiny.

Recommended Next Steps

Businesses operating in New Jersey should take proactive steps before the October 1, 2026, effective date:

1. **Perform a thorough classification review.** Assess all existing independent contractor relationships against the new ABC test to identify potential vulnerabilities.
2. **Reassess high-risk roles:** Focus in particular on workers whose functions are closely tied to the company's primary business operations, as these arrangements face heightened exposure under Prong B.
3. **Review contractual arrangements:** Review and update independent contractor agreements to ensure they reflect the true nature of the working relationship, keeping in mind that contractual language alone will not be dispositive.
4. **Document independent factors:** Maintain contemporaneous documentation demonstrating the absence of direction and control and confirming that each contractor operates a genuinely independent business.
5. **Evaluate structural alternatives:** Where the risk of misclassification remains significant, consider restructuring the engagement model to mitigate liability.
6. **Employee training:** Businesses should train managers, supervisors, and project leads on the practical differences between managing employees and engaging independent contractors. Additionally, managers should be trained to identify when a proposed contractor engagement involves work that falls within the company's usual activities or is part of the company's location. Such training helps alleviate any risk under Prong B.

Porzio's employment and labor attorneys are available to help organizations assess their independent contractor relationships and navigate the evolving requirements under New Jersey's ABC test.