



# New Jersey Appellate Court Provides Guidance for Establishing Independent Contractor Relationship

## Client Advisories

03.31.2026

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In a legal landscape where it seems almost impossible to properly classify and compensate a worker as an independent contractor, the New Jersey Appellate Division recently provided guidance for employers attempting to avoid employee misclassification. On March 26, 2026, the court in *Sanger v. Next Level Business Services, Inc.* affirmed the dismissal of a worker's New Jersey Law Against Discrimination (NJLAD) claims, ruling that she was an independent contractor and therefore not protected by the statute.

This unpublished decision provides a crucial roadmap for employers on how to properly structure, document, and manage independent contractor relationships.

## The Background of the Case

The plaintiff was an experienced technology recruiter. Prior to her engagement with the defendants, Next Level Business Services (NLB) and Cognizant Technology Solutions Company, she had formed her own company, Mirosoft, to provide recruiting services.

In 2019, NLB and Mirosoft executed an "Agency Agreement" for the plaintiff to provide recruiting services to Cognizant. Under the terms of the agreements, the plaintiff's company was explicitly deemed an independent contractor, responsible for its own taxes, workers' compensation, and benefits. Furthermore, the plaintiff was paid through her company, Mirosoft, rather than receiving direct compensation or a W-2 from the defendants.

Thereafter, the plaintiff sued both NLB and Cognizant under the NJLAD, alleging sexual harassment, hostile work environment, and retaliation.

## The Court's Analysis: The *Pukowsky* Factors

To establish liability under the NJLAD, a plaintiff must first prove the existence of an employment relationship; independent contractors are not covered by the law. To distinguish between an employee and an independent contractor in discrimination claims, New Jersey courts utilize the 12-factor *Pukowsky* test, which examines the “totality of the circumstances”.

The Appellate Division concluded that the *Pukowsky* factors overwhelmingly supported the plaintiff’s status as an independent contractor. The court highlighted several critical facts that defeated the plaintiff’s claim of employment:

- **Corporate Engagement and Payment:** The plaintiff was compensated through her separate corporate entity, Mirosoft, rather than as an individual.
- **Lack of Control:** The defendants did not control the “means and manner” of the plaintiff’s daily work; she was free to contact candidates and conduct screening interviews as she saw fit without day-to-day supervision.
- **Clear Contractual Language:** The written agreements expressly designated the plaintiff as an independent contractor and explicitly stated she would not be considered an employee for any purpose, including taxes or benefits.
- **Plaintiff’s Own Admissions:** During her deposition, the plaintiff admitted that she understood from the start of the interview process that she was being brought on as an independent contractor, not an employee.
- **Finite Duration:** The contract was for a limited twelve-month project duration, which is indicative of a contractor relationship rather than permanent employment.

Because the court determined she was an independent contractor, it affirmed the dismissal of her NJLAD complaint in its entirety.

### **What Employers Should Do Now**

The *Sanger* decision is a refreshing reminder that independent contractor relationships *can* be successfully defended in New Jersey if structured correctly. Employers should take the following steps to avoid employee misclassification and protect their businesses:

1. **Contract Entity-to-Entity:** Whenever possible, engage independent contractors through their own established LLCs or corporations, and issue payments strictly to those business entities.
2. **Relinquish Control:** Do not micromanage your contractors. Focus on the final deliverables rather than controlling the specific means, methods, or daily hours of their work.
3. **Avoid Integrating Them Into Core Operations:** Keep contractors out of your company’s internal benefit plans, performance reviews, and disciplinary processes.



4. **Draft Ironclad Agreements:** Ensure your independent contractor agreements explicitly state that the worker is responsible for their own taxes, insurance, and benefits. The agreement should expressly disclaim any employer-employee relationship. Courts do not always rely heavily on the terms of the agreement, but it is a factor and this Court did rely on it when reaching its decision.

If you have any questions about this decision or need assistance auditing your current independent contractor classifications to ensure they hold up in court, please feel free to reach out to **Scott Sears** at [ssears@archerlaw.com](mailto:ssears@archerlaw.com), or **Patrick Papalia** at [ppalia@archerlaw.com](mailto:ppalia@archerlaw.com), or any member of our **Labor and Employment Group**.

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