



New Jersey Adopts Revised Worker Classification Regulations Effective October 1, 2026

Client Advisories

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On May 5, 2026, the New Jersey Department of Labor and Workforce Development (“NJDOLE”) adopted revised regulations interpreting the state’s “ABC Test” for determining whether workers are employees or independent contractors. The regulations will take effect on October 1, 2026.

Background: New Jersey’s ABC Test

Properly classifying a worker as an “employee” or “independent contractor” in New Jersey can be difficult. Currently, under the “ABC Test”, the New Jersey Department of Labor and Workforce Development assumes all workers are employees unless an employer can establish all of the following:

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

Businesses, individuals, and even courts are constantly grappling with situations that may or may not meet these factors. On May 5, 2025, the NJDOLE under Governor Phil Murphy published proposed regulations to codify the ABC Test in an effort to provide clearer guidance. After delaying its enactment and reviewing comments, on May 5, 2026, the NJDOLE under Governor Mikie Sherrill adopted revised regulations that will go into effect October

1, 2026. The stated goal of the regulations is to provide clear standards, transparent enforcement guidelines, and protect the interests of independent contractors, though time will tell whether that goal was achieved.

What the New Regulations Clarify

The new ABC Test is as follows:

A. Control

The business does not control how the person does their work and does not keep the right to control it. The regulations emphasize that a business does not have to control every detail to be an employer, and even some control can still count as employment.

Factors that point to control include:

- Setting work hours or assigned jobs
- Requiring specific tools, supplies, uniforms, logos, or reports on a set schedule
- Requiring the work to be done personally (not by a substitute)
- Negotiating and obtaining the services on the worker's behalf
- Setting the pay rate
- Putting the worker at no real risk of losing money
- Requiring on-call or set availability times
- Limiting the worker's ability to work for others (by area or client type)
- Providing training to the worker

B. Type of Work or Location

The regulations reaffirm that the worker's services must either fall outside the company's usual course of business or be performed outside all of the company's places of business.

Importantly, the regulations recognize that a company may have more than one "usual" line of business. The regulations also clarify that a worker's home office used for remote work generally is not considered the company's place of business.

C. Independently Established Business

The regulations place significant emphasis on whether the worker operates a legitimate, independent business that exists separately from the relationship with the hiring company. It is not enough that they could work for others, they must actually perform work for others.

The NJDOL makes clear that merely forming an LLC or corporation is not sufficient to establish independent contractor status, especially if the hiring company requires or encourages the worker to form the entity.



Factors that the worker operates an independent business include:

- The business stands on its own (duration, strength, and viability)
- Multiple customers and how much each contributes
- How much the worker earns from this company versus others in the industry
- Whether the worker has employees
- The worker's investment in their own tools, equipment, vehicles, space, and other resources
- The worker sets their own rates
- The worker advertises, has a visible business location, and is available in the market

Key Takeaways for Employers

The revised regulations provide additional insight into how the NJDOL will analyze worker classification issues and reinforce the state's strict approach to independent contractor relationships.

Businesses that rely on freelance, consulting, project-based, or other nontraditional work arrangements should consider reviewing those relationships before the regulations take effect on October 1, 2026. In particular, employers should avoid relying solely on independent contractor agreements or LLC formation documents when evaluating classification decisions.

Employers may also wish to conduct proactive audits of existing contractor relationships to assess potential risks under the revised guidance.

If you have questions about the new regulations or would like assistance evaluating worker classifications, please contact **Scott Sears** at ssears@archerlaw.com or 201.753.7002 or **Peter Frattarelli** at pfrattarelli@archerlaw.com or 856.354.3012, or any member of our **Labor and Employment Group**.

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