



State of New Jersey Seeks Millions of Dollars Against Companies for Alleged Misclassification of Workers as Independent Contractors

Client Advisories

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The State of New Jersey has **recently filed a lawsuit** under a 2021 law permitting it to directly sue employers in court for misclassifying workers as independent contractors. The complaint was filed against shipping and logistics companies STG Logistics, Inc. and STG Drayage LLC. The State seeks to recover up to millions of dollars in back wages, penalties and fines from both companies, as well as their officers and directors, for allegedly misclassifying their truck drivers as independent contractors when the State says they are actually employees. The complaint is significant because it represents the first lawsuit of its kind filed directly by the State under legislation enacted in 2021 allowing the State to take more aggressive actions to curb misclassification of workers as independent contractors. Indeed, in connection with the lawsuit, the New Jersey Department of Labor issued a stern warning to businesses stating that “[c]ompanies illegally profiting through corrosive business models at the expense of hard-working employees have been put on notice... Misclassifying employees will not be profitable, nor overlooked.”

Businesses in New Jersey should be mindful in this regard that the State presumes that workers under most of New Jersey’s labor laws are employees unless a company can prove otherwise. (This is also true in several other states as well). To prove that the workers are actually independent contractors, a company must meet a very stringent test normally referred to as the “ABC” test. Pursuant to this test, a company must demonstrate that all three of the following factors are satisfied:

- The worker is free from control over the performance of the work;
- The type of work performed is outside of the company's usual course of business, or the worker is performing work outside of the company's place of business; and
- The worker has his or her own independent trade, job, profession, or business.

This is a very difficult test to meet and most companies fail to satisfy the last factor, which in essence requires a showing that the workers have their own business and are not receiving the majority of their income from just one company.

In the complaint filed by New Jersey, however, the State focused on the control factor to show that the companies were actually controlling the drivers and they were therefore actually employees, not independent contractors. In so doing, the State alleges that notwithstanding that the drivers purchase and maintain their own trucks and in their own names, the company still exercises significant control over them by, for example, requiring that the company's name appear on the truck; requiring the drivers to lease the trucks to the company for its exclusive possession, control, and use; prohibiting the drivers from using the trucks for other work without the company's consent; requiring the drivers to sign a non-negotiable independent contractor agreement; requiring installation of a GPS tracking device in the trucks; assigning all the routes; setting the rates of pay; and mandating drug and alcohol testing.

Because of the alleged misclassification, the State claims that the companies have violated various New Jersey wage laws by, for example, illegally deducting monies from the drivers' pay, such as for fuel and maintenance; failing to pay the minimum wage at times; failing to comply with recordkeeping requirements; failing to make sick time available; failing to provide for worker's compensation insurance; and failing to make required contributions for unemployment compensation insurance and to state disability benefits funds.

Given that New Jersey is especially aggressive against worker misclassification cases, companies must tread very carefully before classifying their workers as independent contractors. If they get it wrong, they are now subject to not just lawsuits from private attorneys, but also the State itself. Improper misclassification of workers as independent contractors could also result in significant liability, including triple damages under New Jersey law, attorneys' fees, and personal liability for officers and directors as well.

If you need assistance regarding the classification of workers as independent contractors or have any questions, please feel free to contact **Douglas Diaz**, a member of Archer's **Labor and Employment Law Group**, at ddiaz@archerlaw.com or 856 616-2614.

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