

New Jersey

New Jersey Announces Final Independent Contractor Rule

On May 5, 2026, the New Jersey Department of Labor and Workforce Development (DLWD) [announced final regulations](#) clarifying the state's ABC statutory test for determining whether a worker is an employee or independent contractor. The DLWD anticipates publishing the final regulations on June 1, 2026, with the new rules taking effect on **Oct. 1, 2026**.

Background

Whether a worker is covered by a particular law or is entitled to receive a particular benefit often depends on whether they are an employee or an independent contractor. In general, employment benefits, labor laws and related taxes do not apply to independent contractors. On April 28, 2025, the DLWD announced proposed regulations to implement the state's ABC test when determining worker classification under New Jersey wage and hour and benefits law. The ABC test presumes that a worker is an employee unless the employer can prove that the worker is an independent contractor by satisfying all three prongs of the test.

Final Regulations

New Jersey's ABC Test

To be classified as an independent contractor under New Jersey law, the employer has the burden of proof to meet all three prongs of the ABC test:

1. The worker has been and will continue to be free from control or direction over the performance of services, both under the worker's contract of service and in fact;
2. The work performed is either outside the usual course of the business for which the work is being performed, or the work is performed outside of all the places of business of the enterprise; and
3. The worker is customarily engaged in an independently established trade, occupation, profession or business.

The final regulations list certain facts relevant to each of the three criteria for determining whether a worker is an employee or an independent contractor.

The final regulations apply to the New Jersey Unemployment Compensation Law, the New Jersey Wage and Hour Law, and the New Jersey Wage Payment Law. The regulations synthesize decades of court decisions, including the New

Highlights

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Oct. 1, 2026

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Jersey Supreme Court's unanimous ruling in *East Bay Drywall LLC v. Department of Labor*, and its landmark decision in *Carpet Remnant Warehouse Inc. v. NJ Department of Labor*. According to the DLWD, the final regulations provide New Jersey businesses with clarity and guidance to compete fairly and comply with the state's labor laws by correctly classifying workers.

Changes From Proposed Rule

During the rulemaking process, the DLWD extended the public comment period from 60 to 90 days, held an open public hearing and received thousands of comments. As a result, the final rule is narrower than the proposed rule. Business community feedback led to several changes to the adopted regulations, including removing the following from the proposed rule:

- Specific examples of workers whose services fall within the usual course of an employer's business;
- Treatment of software, including smartphone applications, as a form of control;
- A focus on whether the worker actually performs work for others and receives payment for that work, rather than whether the worker simply has a right to do so;
- Differentiation between off-site work that is essential to an employer's business and work that is merely ancillary; and
- Language stating that control is evidence of employment even when the employer exercises that control solely to comply with another law.

The final rule also adds several provisions to the proposed rule, including:

- Stating that the regulations do not affect any exemptions or exclusions established by statute (e.g., minimum wage and overtime exemptions);
- Clarifying how remote work factors into worker classification analysis;
- Establishing that actions employers take to comply with federal, state or local law do not constitute control under the ABC test.

Employer Takeaway

Under the final regulations, New Jersey employers must carefully apply the three-pronged ABC test when classifying their workforce. Employers should review the final regulations and adjust their workplace policies and practices accordingly to avoid misclassifying workers.

It is possible that the final regulations will be challenged in the courts. Therefore, employers should monitor the regulations for any updates and related legal challenges.
