

New Jersey Finalizes ABC Test Rule: A Measured Retreat, Not a Reset

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By Sarah Goodman



After more than a year of delay and unusually forceful opposition from the business community, the New Jersey Department of Labor has adopted final regulations implementing the state's "ABC" test for worker classification.

The final rule reflects a meaningful course correction from the proposal first circulated in 2025. It is narrower, more measured in tone, and less overtly targeted at particular industries. But it does not alter the underlying premise. New Jersey continues to place a heavy burden on businesses seeking to classify workers as independent contractors, and these regulations reaffirm that approach with greater clarity rather than greater flexibility.

Clarity Arrives — on the State's Terms

The regulations operate across multiple statutory schemes, including the state's wage-and-hour, wage payment, and unemployment compensation laws.

At their core is the familiar but demanding ABC test. A worker is presumed to be an employee, and the hiring entity must establish all three elements to rebut that presumption: that the worker is free from control in both contract and practice; that the work is performed outside the usual course or places of the company's business; and that the worker is engaged in an independently established trade or business.

The significance of the final rule lies less in redefining those elements than in codifying how the Department expects them to be applied. In doing so, the rule closes off ambiguity that had previously allowed employers to rely more heavily on contractual structuring and industry convention.

A Noticeable Step Back from the Edge

The most notable feature of the final rule is what it no longer says. In several respects, the Department retreated from positions that would have pushed New Jersey's already stringent framework even further.

Most visibly, the rule abandons the proposal's use of industry-specific examples. Those examples — focused on rideshare drivers, construction trades, and similar roles — had been criticized as outcome-driven. Their removal restores a measure of neutrality, even if it also leaves employers with less informal guidance.

Equally significant is the Department's reversal on its approach to legal compliance. The proposed rule suggested that steps taken to comply with other legal obligations (such as training, supervision, or similar controls) could still weigh in favor of employee status. The final rule rejects that approach, making clear that compliance-driven requirements are not, without more, evidence of control. This change is likely to have practical importance for employers operating in regulated industries.

The final rule also abandons several interpretive positions that would have expanded the concept of “control” or “place of business,” including the suggestion that required use of company software is inherently indicative of control, or that off-site work could nonetheless be treated as occurring at the employer’s place of business based on its importance to the enterprise. Taken together, these deletions suggest a more restrained (and more defensible) regulatory posture.

Refinements at the Margins

The Department also introduced clarifications that, while modest, are directionally helpful. The rule confirms that existing statutory exemptions remain intact, avoiding any suggestion that the regulatory framework displaces those carve-outs. It also addresses remote work directly, explaining that a worker’s home is not automatically part of the employer’s place of business; a point that carries particular relevance in a post-pandemic workforce.

These changes do not alter the structure of the ABC test. They do, however, narrow the risk that ordinary, compliance-driven, or modern workplace practices will be recast as evidence of employment.

The Core Framework Remains Firmly in Place

Notwithstanding these revisions, the substance of the regime remains unchanged in the respects that matter most for employers.

The burden of proof continues to rest entirely with the business. The inquiry remains fact-driven and cumulative, rather than formalistic. And, critically, the rule reiterates that commonly relied-upon indicia of independent contractor status (including written agreements, the use of business entities, or even the existence of multiple clients) are not dispositive.

In practice, the most difficult element will continue to be the requirement that the work fall outside the company’s usual course of business. Where a worker is performing the same core services that define the enterprise, the final rule offers little comfort. The revisions do not relax that standard; they merely clarify how it will be assessed.

A Short Runway to Implementation

The rule is expected to be published in June 2026 and to take effect on October 1, 2026.

That timeline leaves a limited window for employers to reassess existing classifications. Given New Jersey’s long-standing focus on misclassification, and its willingness to pursue significant enforcement actions, the expectation should be that the clarified standards will be actively applied.

A More Tempered Rule, But No Easier Path

In the end, the Department did not abandon its approach; it refined it. The final rule is less aggressive in tone and more attentive to practical business realities than the version initially proposed. It removes several features that had appeared designed to expand the reach of the ABC test at the margins.

But the central proposition remains the same. New Jersey is not seeking to make independent contractor classification easier. It is seeking to make the rules clearer and ensure they are consistently enforced.

For employers, that clarity is useful, but it also eliminates any remaining doubt about the rigor of the standard they are expected to meet.