

New Jersey Department of Labor Issues Poster Regarding Independent Contractor Misclassification

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By [Maxine Neuhauser](#)

Earlier this year, New Jersey Gov. Phil Murphy signed a [legislative package](#) of six laws addressing worker misclassification, i.e., the improper classification of employees as independent contractors. One of the new laws, [S4227](#) (“the Law”), requires employers, as of April 1, 2020, to post a notice for employees regarding misclassification “in a form to be issued by the commissioner [of Labor and Workforce Development].” In May, the New Jersey Department of Labor and Workforce Development (“NJDOL”) posted the required form of notice (“Notice”) [on its website](#).

The Law requires employers to “conspicuously” post the Notice in a “place or places accessible to all employees in each of the employer’s workplaces[.]” The Law is silent with respect to the electronic posting or distribution of the Notice. It remains to be seen whether the NJDOL will publish guidance or a regulation addressing that issue, particularly in light of current work-from-home orders.

Seven Questions and Answers

The Notice is in the form of seven questions and answers, which explain:

1. misclassification and the “rights, protections and benefits” misclassified workers may be deprived of (e.g., unemployment compensation, temporary disability benefits, family leave insurance benefits, workers’ compensation, family leave, and earned sick leave);
2. the statutory criteria (referred to as the “ABC test”) that must be met for a worker to be properly classified as an independent contractor, specifically, that:
 - A. the worker is free from control or direction over the performance of his or her services; and
 - B. the services provided are either outside the usual course of the company’s business, or the services are performed outside of the company’s places of business; and

- C. the worker has an independently established business;
3. that workers are presumed to be employees and that the employer has the burden of proving that the three parts of the ABC test for being classified as an independent contractor are met;
 4. that the worker's receipt of an IRS Form 1099, as opposed to a Form W-2, is irrelevant to determining classification;
 5. that a signed independent contractor agreement is similarly irrelevant to the determination;
 6. the potential penalties and remedies for misclassification (e.g., back pay to the misclassified worker for any unpaid minimum wage or overtime, liquidated damages, civil penalties, the imposition of stop work orders, and the suspension or revocation of licenses held by the employer); and
 7. that the Law prohibits retaliation against employees who report misclassification to the NJDOL.

What New Jersey Employers Should Do Now

- Print out the Notice [from the NJDOL website](#), and then post it conspicuously in each New Jersey place of business.
- Although not required by the Law, if you have an intranet, consider also posting the Notice online.

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