



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. Box 110
TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

Dear Licensee:

As you know, one of our many responsibilities at the Department of Labor and Workforce Development (NJDOL) is the collection of contributions due from employers to the unemployment compensation and State disability benefits funds under N.J.S.A. 43:21-7. In carrying out this responsibility we have seen a number of cases where small and medium sized employers believe that by simply making the decision to report a worker's earnings to the federal government using Form 1099, as opposed to Form W-2, a potential employer may unilaterally deem that individual to be an independent contractor, thereby avoiding the responsibility under N.J.S.A. 43:21-7 to make contributions respecting that individual to the unemployment compensation and State disability benefits funds.

On behalf of the Department of Labor and the Division of Consumer Affairs, we are writing to remind you that under N.J.S.A. 43:21-1 et seq., the New Jersey Unemployment Compensation Law (NJUCL), if a service is performed for remuneration or under any contract of hire, written or oral, express or implied, it is considered to be covered employment, unless the potential employer is able to establish the following with regard to the service at issue and the individual providing that service:

- (A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
- (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

N.J.S.A. 43:21-19(i)(6).


This statutory criteria, commonly referred to as the "ABC test," is written in the conjunctive. Therefore, where a putative employer fails to meet any one of the three criteria listed above with regard to an individual who has performed a service for remuneration, that individual is considered to be an employee and the service performed is considered to be employment subject to the requirements of the NJUCL; in particular, subject to N.J.S.A. 43:21-7, which requires an employer to make contributions to the unemployment compensation fund and the State disability benefits fund with respect to its employees.

As alluded to earlier, in support of independent contractor status, potential employers all too often assert that the individual is engaged in "1099 work," is a "1099 employee," works in a "1099 job," or is "paid with a 1099." These assertions come with the related inference that by simply making the decision to report a worker's earnings to the federal government using a particular form, a potential employer may unilaterally deem that individual to be an independent contractor. Again, it is our intention through this letter to remind you in the strongest possible terms that in New Jersey whether someone is considered an independent contractor, as opposed to an employee, is governed by the "ABC test," not by whether the putative employer is using a Form 1099 to report a worker's earnings to the federal government.

We would respectfully request in the new year and beyond that as a professional, licensed by the Board of Accountancy under the New Jersey Accountancy Law, N.J.S.A. 45:2B-42 et seq., the purpose of which is to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial performance of commercial and non-commercial enterprises, you keep the foregoing in mind as you meet with business clients who are inquiring as to the appropriate classification of their workers, whether as part of an initial business model design, a tax/financial evaluation of an existing business, or simply in providing assistance to business clients in the filing of quarterly wage and contribution reports.

Should you have any questions related to misclassification, please call the Department of Labor at 609-292-2321. We thank you for your time and your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Asaro-Angelo", with a long horizontal flourish extending to the right.

Robert Asaro-Angelo
Commissioner

A handwritten signature in blue ink, appearing to read "Paul R. Rodriguez", with a long horizontal flourish extending to the right.

Paul R. Rodriguez
Acting Director, Division of Consumer Affairs