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The ABC Test Determines Independent Contractor Status Under the New Jersey Wage Payment and Wage Hour Laws



On January 14, 2015, in *Hargrove v. Sleepy's LLC*, the New Jersey Supreme Court answered a certified question from the Third Circuit and held that the “ABC” test governs whether a plaintiff is an employee or an independent contractor under the New Jersey Wage Payment Law and the New Jersey Wage and Hour Law.

Therefore, companies defending their independent contractor classifications in either litigation or government investigations under these statutes will be required to show that an individual providing services:

- (A) is free from the company’s control in performing the services;
- (B) performs work outside the usual course of the company’s business or outside the company’s place of business; and
- (C) is engaged in an independently established business.

The plaintiffs in *Hargrove v. Sleepy's* delivered mattresses for Sleepy’s, and filed suit under the New Jersey Wage Payment law (and several other statutes) alleging that Sleepy’s misclassified them as independent contractors. The case was litigated before the U.S. District Court for the District of New Jersey.

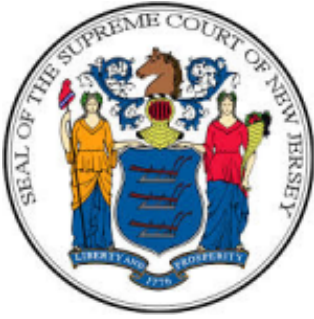
Sleepy’s argued that plaintiffs’ status as employees should be decided under the “right to control” test applied by to ERISA claims by the United States Supreme Court in *Nationwide Mutual Ins. Co. v. Darden*.

The District Court applied the “right to control” test and concluded that the plaintiffs were, in fact, independent contractors. The plaintiffs appealed to the Third Circuit Court of Appeals.

In May 2013, the Third Circuit petitioned the New Jersey Supreme Court to answer the following question:

Under New Jersey law, which test should a court apply to determine a plaintiff’s employment status

for purposes of the New Jersey Wage Payment Law, N.J.S.A. § 34:11-4.1, et seq., and the New Jersey Wage and Hour Law, N.J.S.A. § 34:11-56a, et seq.?



The New Jersey Supreme Court granted the petition by the Third Circuit.

The New Jersey Supreme Court noted that neither the Wage Payment Law nor its regulations provide criteria for distinguishing between an employee and an independent contractor. However, the New Jersey Department of Labor and Workforce Development’s regulations implementing the Wage Hour Law expressly provide that the distinction between an employee and an independent contractor should be resolved by reference to the ‘ABC’ test.”

The Supreme Court of New Jersey stated that the “express purpose” of both statutes is to foster “the provision of greater income security for workers.” The Court asserted that the “ABC” test “operates to provide more predictability” than other tests of independent contractor status, and that there was no good reason “to depart from the standard adopted by the DOL to guide employment status determinations or to disregard the long-standing practice of treating both statutory schemes in tandem.”

For those reasons, the New Jersey Supreme court held that any dispute regarding independent contractor status arising under the Wage Payment Law and the Wage and Hour Law should be resolved by utilizing the “ABC” test.

The decision in *Hargrove v. Sleepy’s* is important in large part because the “ABC” test is significantly different from other independent contractor tests. In particular, employers should scrutinize the New Jersey Supreme Court’s description of part C of the test as (requiring an independently-established business):

Therefore, part C of the “ABC” test is satisfied when an individual has a profession that will plainly persist despite the termination of the challenged relationship... When the relationship ends and the individual joins the ranks of the unemployed, this element of the test is not satisfied.

Accordingly, New Jersey employers should further examine their independent contractor relationships against the criteria of the “ABC” test.

Tags: ABC test, independent contractor, New Jersey Wage Hour Law

Wage and Hour Defense Blog
Epstein Becker & Green, P.C.

Baltimore
7000 Security Boulevard
Suite 300
Baltimore, MD 21244

Chicago
150 N. Michigan Ave.
35th Floor
Chicago, IL 60601-7553

Los Angeles
1925 Century Park East
Suite 500
Los Angeles, CA 90067-
2506

Boston
99 Summer Street

Houston
Two Houston Center

New York

Suite 1600
Boston, MA 02110

909 Fannin
Suite 3838
Houston, TX 77010

250 Park Avenue
New York, NY 10177-
1211

Newark
One Gateway Center
Newark, NJ 07102-5311

Stamford
One Landmark Square
Suite 1800
Stamford, CT 06901-
2681

San Francisco
655 Montgomery Street
Suite 1150
San Francisco, CA
94111

Washington, DC
1227 25th Street, NW
Suite 700
Washington, DC 20037-
1175

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