



ACCNJ LEGAL & INSURANCE UPDATE

JANUARY 2026

NJDOL PROPOSES NEW RULES CLARIFYING ABC TEST FOR INDEPENDENT CONTRACTORS

Earlier this year, the New Jersey Department of Labor & Workforce Development (NJDOL) proposed rules codifying its interpretation of the ABC test, used to determine whether a worker is an employee or independent contractor under several New Jersey labor laws.

Under the ABC test, the employer must prove all three of the following:

- A. The worker is free from the employer's control or direction;
- B. The work is outside the employer's usual course of business or physical location; and
- C. The worker is engaged in an independently established trade, occupation, or business.

The new rules codify the interpretations by the NJDOL and Supreme Court of New Jersey and establish detailed lists of non-exhaustive factors for each prong to guide determinations. For example:

- Under Prong A, factors such as whether the employer sets hours, controls the means and details of the work, requires the use of employer-supplied tools, or restricts work for others.
- Under Prong B, the rule clarifies what constitutes a "place of business" (including the customer's residence or on-site location) and when work is part of the employer's usual business.
- Under Prong C, the rule spells out factors like the number of customers the worker has, the degree of business independence, whether the worker sets their own rates, invests in their tools/vehicles, etc.

By incorporating the test into the New Jersey Administrative Code, regulators would no longer need to rely primarily on court rulings. The NJDOL would have clear authority to apply the test in investigations and enforcement actions, strengthening efforts to address worker misclassification. As the rules move toward final adoption, construction firms should review their independent contractor arrangements and ensure they have documentation supporting each prong of the test.

U.S. DOT ANNOUNCES SIGNIFICANT CHANGES TO DBE PROGRAM

On October 3, 2025, the U.S. Department of Transportation introduced major changes to the Disadvantaged Business Enterprise (DBE) program through an Interim Final Rule (IFR), which eliminated the race- and gender-based presumptions of social and economic disadvantage. Pursuant to the IFR, the New Jersey Unified Certification Program, which includes the New Jersey Department of Transportation (NJDOT), NJ TRANSIT, and the Port Authority of New York and New Jersey, must reevaluate the eligibility of all currently certified DBEs and Airport Concession Disadvantaged Business Enterprises (ACDBEs) in accordance with the revised certification standards.

To undergo reevaluation under the updated rules, each Socially and Economically Disadvantaged Owner (Owner), making up at least 51% of ownership, is required to submit a personal narrative, demonstrating “individualized and specific instances of social and economic disadvantage from any point in [the Owner’s] life within American society.” The personal narrative must describe how “economic hardships, systemic barriers, and/or denied opportunities have impeded [the Owner’s] educational, employment or business development efforts, including [the Owner’s] ability to obtain financing on terms comparable to those available to similarly situated, non-disadvantaged individuals.”

On January 12, 2026, the NJDOT issued a [LETTER](#) providing guidance on the reevaluation process. The letter sets a February 12, 2026, deadline for firms to submit a personal narrative, a current Personal Net Worth statement, and any other documentation deemed appropriate through the [NJDOT Certification Portal](#).

Please contact the Association’s office if you have any questions or require further assistance.

ACCNJ INSURANCE MARKET & TRENDS WEBINAR

In case you missed it, ACCNJ will host a webinar presented by associate member Arthur J. Gallagher & Co. on February 26, 2026, at 9:30 AM. Gallagher’s Construction Risk Management team will give a timely update on the construction insurance marketplace in the Northeast. The discussion will include policy-specific rate trends (general liability, auto, property, umbrella, and workers’ compensation), available credits to help reduce premiums, and feedback on what insurance carrier underwriters are looking for in a market submission.

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