

## Independent Contractor or Employee – New Standard in New Jersey

The New Jersey Supreme Court has held “that the ‘ABC’ test derived from the New Jersey Unemployment Compensation Act, N.J.S.A. 43:21-19(i)(6), governs whether an individual is an employee or independent contractor for purposes of resolving a wage-payment or wage-and-hour claim.” *Hargrove v. Sleepy’s, LLC*, No. A-70-12 (Jan. 14, 2015).

### **ABC Test**

Under the ABC test, a worker is considered an employee unless an employer can satisfy all three of these criteria:

- (1) that “it neither exercised control over the worker, nor had the ability to exercise control in terms of the completion of the work”;
- (2) that the worker performs work outside the usual course of the employer’s business or outside the employer’s place of business; and
- (3) that the worker “has a profession that will plainly persist despite the termination of the challenged relationship.”

The failure to prove even one of the three criteria results in a worker being classified as an employee, rather than an independent contractor.

There now is no question that New Jersey employers must satisfy the worker-friendly ABC test in employee-status disputes under both the New Jersey Wage Payment Law (WPL), N.J.S.A. 34:11-4.1 to -4.14, and the New Jersey Wage and Hour Law (WHL), N.J.S.A. 34:11-56a to -56a38.

Consequently, employers who use independent contractors may be forced either to reclassify some of their workers as employees, or tailor their contractor relationships in order to satisfy the test.