

NEW JERSEY ABC TEST

(Extracted from 2007 Employer Handbook - New Jersey's Unemployment & Disability Insurance Programs - Chapter 1, Section 3: Liability for Contributions (Taxes))

1. Independent Contractors

Whenever services are performed for remuneration (including commissions, bonuses and the cash value of compensation in kind), the question of whether such services are considered as performed by an independent subcontractor or a covered employee is determined by application of the three tests of Section 19(i) (6) (A), (B) and (C) of the New Jersey Unemployment Compensation Law.

All remunerated services performed by an individual are deemed to be employment, unless it is established to the satisfaction of the Department that:

- 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."
- 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." This is a two-part test and satisfaction of either part will meet the requirement. Service which is essential to the nature of the business does not meet the first part of this test, regardless of whether any employee performs the same type of service. If there is no fixed place of business, services performed in whole or in part at a temporary work site or an area where customers or prospective customers are located will not meet the second part of this test.
- C. "Such individual is customarily engaged in an independently established trade, occupation, profession or business." This requires the individual's business activity to exist and continue to exist independently of, and apart from, the particular service relationship; it must be a stable, lasting enterprise which will survive termination of the relationship.