

Governor Murphy Signs Legislative Package Designed to Curb Gig Economy; Omits Controversial Bill Proposing Revision of "ABC Test"

On January 20, 2020, New Jersey Governor Phil Murphy, in yet another strongly pro-employee move, signed a sweeping legislative package to curb worker misclassification and control the gig economy. Dubbed the "Misclassification Package," the bills aim to protect self-employed workers by requiring the companies that hire them to pay their share of payroll taxes, however it does so at an ever-increasing cost for employers. Consequently, this enactment will most likely result in employers becoming reluctant to engage certain categories of independent contractors out of fear of being saddled by additional expenses they may not be able to afford.

As an overview, the package of six new laws will penalize employers in the state who are intentionally misclassifying employees (A5389); allow stop-work orders to be issued against employers violating state wage, benefit and tax laws (A5838); permit the Department of Labor (DOL) to post information identifying individuals in violation of state wage, benefit and tax laws (S4226); require employers to post notices describing misclassification (A5843); allow tax data sharing between the New Jersey Department of Treasury and the DOL (S4228); and, hold labor contractors and employers in the state equally liable for evading tax laws (A5840).

As with any new employment-related legislation, there are inevitable questions regarding employer compliance. Employers should closely review the following noteworthy aspects of each newly-enacted law:

Interestingly, the most controversial bill, S4204, never made it to the governor's desk. This legislation would have redefined the "ABC test" endorsed by the New Jersey Supreme Court to distinguish between employees and independent contractors in a way that would vastly expand the definition of "employee" in New Jersey.

The current ABC test states that a worker can be an independent contractor only if he or she:


The proposed bill would eliminate the second part of "B" and would also add a requirement to "C" that would require an individual to provide the company the same type of services that he or she provides in the profession or trade. The proposed changes would make it much harder to qualify individuals as independent contractors. Although the bill provided limited exceptions for groups traditionally deemed independent contractors, it left categories such as independent truckers, freelancers, and real estate brokers vulnerable to employee classification.

S4204 has become a hot-button topic, as concern is widespread that the practical impacts of this legislation would be adverse to "gig economy workers" who may not be hired by employers who are weary of the additional taxes and extra benefits they would be obliged to offer. Indeed, California saw a chilling effect on the hiring of certain categories of employees, namely freelancers, when similar legislation was passed in September 2019. In response, the American Society of Journalists and Authors sued the state, claiming the law restricts its members' professional speech and prevents them from making a living as freelancers.

New Jersey employers are cautioned to familiarize themselves with these new laws to ensure compliance with notice requirements. Further, employers who retain the services of independent contractors who may be deemed employees under the proposed revisions to the ABC test should evaluate the impact of this potential legislation on their business and make adjustments proactively.

We will continue to monitor these issues on behalf of our employer clients and will advise on further developments in a timely manner. In the meantime, please contact the authors of this Alert, **Maja M. Obradovic** and **Brooke Emery**, with any questions or for additional information.

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