



New Jersey Ramps Up Misclassification Laws, But Businesses Dodge Bullet (For Now)

Insights

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New Jersey businesses will now face an increased slate of potential penalties for misclassification violations thanks to a series of bills just signed into effect by Governor Phil Murphy, but gig economy companies can breathe a sigh of relief because lawmakers declined to adopt a large-scale misclassification California-like law that could have seen tens of thousands workers classified as employees instead of contractors. The six bills signed into effect last week emerged from a worker misclassification task force, but thanks in part to the controversy that has plagued California's AB-5 – which codified the infamous ABC test and has caused countless headaches in workers and businesses alike – the state decided not to pursue a proposal that would have approached that same territory. But the reprieve may only be temporary: lawmakers and worker advocates alike are already heard at work in the 2020 legislative session to pass a modified ABC test that would upend the current classification structure.

New Misclassification Laws

Emerging from the task force were six bills signed into effect by Governor Murphy on January 21. Five of them took effect immediately:

- **Stop-Work Orders:** A.5838 permits state officials to issue stop-work orders requiring cessation of business operations at a specific place of business or at the location of a violation if it is determined that an employers has committed misclassification violations.
- **Financial Penalties:** A.5839 will allow the state to impose financial penalties for misclassification – up to \$250 per misclassified employee for the first violation and up to \$1,000 for each subsequent violation, and a penalty to the misclassified worker of not more than 5% of their gross earnings over the past 12 months.
- **Joint Liability:** Under A.5840, joint liability can now be imposed on labor contractors that provide misclassified workers to an employer.
- **Publishing Violators:** S.4226 will provide the state Department of Labor and Workforce Development with the authority to “name and shame” businesses that misclassify workers by posting their company names on its website, with removal only coming after the entity has satisfied any outstanding liability. Such companies will be prohibited from contracting with any public agency while their name is listed on the website.

- **Shared Information:** S.4228 gives permission to the State Treasury to share tax data with the Department of Labor and Workforce Development to permit a more efficient system of enforcing misclassification laws.

Finally, the state also passed a law (S.5843) that will require all employers to post a **Workplace Posting** (in a form soon to be issued by the labor commissioner) explaining:

- the prohibition against misclassification;
- the standard for determining whether a worker is an employee or contractor;
- the benefits and protections employees are entitled to under the law;
- the remedies available to misclassified workers; and
- contact information for those wanting to complain about potential misclassification.

This posting will be required by April 1, 2020. In addition, the law has an **Anti-Retaliation** provision prohibiting companies from discriminating against workers that lodge misclassification complaints with the employer or with the state.

Will The ABC Test Be Codified?

As we noted back in November, New Jersey state lawmakers had been kicking around the idea of codifying the ABC test in a manner similar to the way California adopted AB-5, but seemed hesitant to proceed given the upswell of criticism following California's new law. Luckily for businesses, the "big one" did not emerge from the misclassification taskforce. But that doesn't mean that we may not see an ABC bill in 2020. According to Bloomberg Law's Chris Marr, Senate President Steve Sweeney and labor unions have "vowed they'll keep pushing for a bill that imitates California's AB-5 law." With the 2020 legislative session already having kicked off on January 14, we may not have to wait long to see such a bill introduced.

What might such a proposal look like? A labor lobbyist indicated to Bloomberg Law that it might contain a more lenient prong B and a revised prong C, moves aimed at avoiding the same kind of legal trouble facing California lawmakers in the wake of their new statutory version. We will of course continue to pay close attention to what might spring forth from the New Jersey legislature in the new year and keep our readers up to date.

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