



August 4, 2025

David Fish  
Executive Director  
Legal and Regulatory Services  
NJ Department of Labor and Workforce Development  
PO Box 110  
Trenton, NJ 08625

**Re: Comment of Independent Women and the Center for Economic Opportunity Seeking Withdrawal of Proposed New Rules: N.J.A.C. 12:11; ABC Test; Independent Contractors**

Dear Director Fish,

The Center for Economic Opportunity (CEO) is a center of Independent Women, a non-profit, non-partisan 501(c)(3) organization founded by women to foster education and debate on legal, social, and economic policy issues. The CEO's goal is to advocate for common-sense policy solutions, grounded in data, to expand workplace choice, freedom, and opportunity and thereby improve the lives of women and workers.

Independent Women submits these comments to express opposition to the Department of Labor and Workforce's proposed new rules entitled, "Proposed New Rules: N.J.A.C. 12:11; ABC Test; Independent Contractors," published in the New Jersey Register of May 5, 2025.

Independent Women believes the Department's proposed rules would alter the language of the ABC test in a way that would lead to mass reclassification of independent contractors across the state. Workers, especially women, who depend on this model of work will lose flexibility and be forced out of the workforce. Small businesses that rely on independent contractors would face new legal exposure and potential penalties from misclassification findings. Those who cannot afford to hire their independent workforce as employees may be forced to shut down. We believe this will have a detrimental impact on the self-employed workforce and the state's economy overall.

**New Jersey's Proposed Rules**

The Department proposes changes to its employment test that will lead to mass reclassification of many of the state's independent workers.

Currently, under state law, the three-prong ABC test establishes that a worker is classified as an independent contractor when an individual:

- (A) is free from the control or direction of a business in performing the service;
- (B) performing the service is outside the “usual course of business” or outside of “all the places of business” of the company; and
- (C) is engaged in an independent “trade, occupation, profession or business.”

The proposal would rework the prongs in ways that will make it more challenging to meet the standards and effectively lead to many workers being reclassified. Vague new factors, subcategories, and examples introduce greater confusion and complexity in determining worker classification. Open-ended statements included in the proposed changes that do not clearly define which factors are appropriate for a given situation or how factors are weighed create significant new uncertainty for businesses and independent workers.

Through these proposed rules, the Department seeks to regulate what the New Jersey legislature failed to codify. In 2019, the New Jersey legislature sought to impose new restrictions on independent contractors through legislation that failed to pass following public outcry. This alone is concerning since the legislature, which is accountable to the people, should make sweeping changes to employment policy, not unaccountable and unelected regulators.

## **Women Stand to Lose**

Freelancing has a long history in America. Technology’s development of app-based freelance and gig opportunities has expanded the ranks of freelancers, creating a thriving community of self-employed professionals and skilled workers.

Over **70 million** Americans freelanced in 2023, and about half of them were women. While many people find rewarding full-time careers working for themselves, the vast majority of independent contractors are earning supplemental income; this is not their primary job. According to a 2021 Pew Research Center **analysis**, 68% of gig workers use platforms for a side job compared to 31% who use them for primary work.

In working for themselves, freelancers control when, where, how, and for whom they work. According to the Bureau of Labor Statistics, flexibility is a top reason that over **80%** of independent contractors indicated that they prefer this work arrangement over traditional employment.

Flexibility is the primary motivator for women. In 2023, **nine out of ten** female workers who left full-time employment to engage in independent contract work said they did so to prioritize flexibility over stability.

Independent contracting offers women the ability to manage other priorities, such as caregiving for children, aging parents, or sick spouses, and managing their personal health conditions. Some flexible workers are pursuing their own education. Still, others use freelancing as an entry point into entrepreneurship.

Independent contractors report high levels of financial strength and security. Last year, **52%** of independent workers indicated they earn more money working on their own, with 4.7 million of them earning over \$100,000 annually. Two out of three (65%) full-time independent workers felt more secure working independently.

Independent contractors also indicate that the freedom and flexibility they enjoy improve their quality of life: A significant **84%** are happier, and 79% said working on their own was better for their health. In 2022, researchers at UCLA Health **found** that “self-employed women had a 43% lower risk of reporting high blood pressure, a 34% lower risk of reporting obesity, and a 30% lower risk of reporting diabetes compared to women who work for a salary or wages.”

Losing their independent status leaves women in worse financial, family, health, and personal situations. For many women, independent contracting is not just a preference, but the only way they can continue to work because of their unique circumstances.

At Independent Women, we speak to **women** who can raise children or undergo medical treatments because of their ability to work flexibly rather than in a traditional 9-to-5 job. One New Jersey independent contractor **explained in an interview**, “When I started with New York Life, I was recovering from a painful divorce, raising two young sons—just 2 and 4 years old. This profession gave me what I needed most: a flexible, rewarding and meaningful career as a business owner to provide for my family.” On this proposed rule, she noted, “Please don’t destroy my career—a career that helped me stand on my own two feet and raise my children.”

In surveys, women and adults overall oppose efforts by the government to restrict independent contracting. In **polling** released this year, 82% of women and overall voters, 80% of young voters, and 79% of seniors agree that the government should allow people the flexibility to be independent contractors.

Mass reclassification would undermine women’s attachment to the labor force. Their households would be negatively impacted by the expected loss of primary or supplemental income. We would ask the Department:

- *To estimate how many independent contractors, such as freelancers, self-employed professionals, and gig workers, would be forced out of the workforce if they were reclassified as traditional employees.*
- *To explain how many women would be affected by reclassification.*

- *To estimate the economic impact of mass reclassification on the economy, workforce, and state budget.*

## California's ABC Test

New Jersey's proposed rule harkens to similar legislation passed in 2019 in California. Assembly Bill 5 (AB 5), enacted in 2020, implemented a rigid ABC test that led to devastating consequences across California's economy. It was assumed that businesses would hire their contracted workforce as employees and absorb the estimated 30% labor-cost increase.

However, an employment increase never materialized. Instead, AB 5 spawned the loss of income, contracts, and livelihoods for freelancers. The group Freelancers Against AB5 compiled a [list of personal stories from 600 professions](#) impacted by AB 5. Self-employment fell by 10.5%, and overall employment fell by 4.4%, according to [research](#) by Liya Palagashvili and others at the Mercatus Center. Critically, as this research found, AB 5 did not lead to the hoped-for growth in traditional employment.

Entire professions that were not able to secure exemptions were wiped out. Women like Jessica Tucker, a freelancing transcriber from Linda, CA, lost coveted flexible opportunities. Tucker once earned \$60 an hour for her transcription services while working at home, pursuing a master's degree, and raising two children. "AB5 took this away completely, and my family has been struggling to put food on the table ever since," she [noted](#). "This law directly targeted marginalized women like myself." Consumers also pay a higher price for the services when the supply of workers in an industry diminishes. Those seeking transcription and translation services are also casualties of this law.

Independent contractors left the state and relocated to states that do not restrict independent contractors. The small businesses that depend on independent contractors to survive were also placed in turmoil. For example, Monica Wyman managed a thriving floral and wedding event planning business while raising children and battling cancer in California until AB 5. She employed other stay-at-home mothers as independent contractors due to the sporadic and seasonal nature of her business. Under the rigid ABC test, her business model couldn't pass the rigid ABC test, she [explained](#). "I'm at this crossroads where I'm thinking I'm going to have to dissolve my business and close my doors."

We would ask the Department whether it considered the impact of California's ABC test on its workforce and small businesses before embracing these devastating new restrictions.

## Summary

New Jersey's Department of Labor has indicated that it seeks to alter its ABC test, establishing worker classification, in ways that increase complexity and uncertainty rather than providing certainty and clarity. This will lead to mass reclassification of the state's independent workforce with a disproportionate impact on women.

Seeking to combat worker misclassification is understandable, but the DOL should first understand the level of misclassification in the workforce and investigate industries where it commonly occurs to better target enforcement efforts rather than taking a broad, sweeping approach that penalizes all employers of independent contractors and could lead to all independent contractors losing their status.

Freelancers, self-employed professionals, and gig workers desire flexibility to work around important priorities. Many women cannot stay in the workforce if they lose their independent contractor status. As California demonstrates, mass reclassification efforts will lead to devastating outcomes for women, the workforce, and the small business community that depends on independent contractors to operate.

Independent Women and the CEO request that the Department withdraw the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrice Onwuka', with a stylized, elongated flourish extending to the right.

Patrice Onwuka  
*Director, Center for Economic Opportunity*  
*Independent Women*