

Press Coverage | May 6, 2025

New Jersey, Feds Take Opposite Paths on Independent Contractor Rules

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Richard Reibstein

Richard Reibstein, a partner in Troutman Pepper Locke's Labor + Employment Practice Group, was quoted in the May 6, 2025 *FreightWaves* article, "[New Jersey, Feds Take Opposite Paths on Independent Contractor Rules](#)."

One of the most knowledgeable observers of IC status – and one who writes what is believed to be [the only blog dedicated to the issue](#) – is attorney Richard Reibstein of the law firm of Troutman Pepper Locke. In back-to-back recent postings, he again reiterated an earlier view that the IC rule at WHD is not particularly important relative to what courts rule on the IC status question.

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But Reibstein's view of the New Jersey changes on AB5 are dire in predicting their impact on ICs in the Garden State.

The state, in explaining its goals for the changes it is proposing, said the proposed rules "aim not only to safeguard the rights and benefits of employees who have been wrongly classified as independent contractors, but also to affirm the right of genuine independent contractors to forgo employment in favor of engaging in independently established business enterprises."

But Reibstein saw the impact as far more sweeping.

"The new regulation would likely prompt companies utilizing ICs in New Jersey to either cease operating their businesses in the Garden State or double down in their efforts to enhance their IC compliance," Reibstein said. The "doubling down" could include using a service offered by the Troutman Pepper Locke law firm called [IC Diagnostics](#).

In California, the trucking sector has been focused on the potential problems that the B prong of the ABC test in AB5 could create. The B prong is a simple definition. It says a worker can be considered independent if he or she "performs work that is outside the usual course of the hiring entity's business." A trucking company utilizing a non-employee independent truck driver could be viewed in conflict with that.

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The proposed widening of the definition of "place of business," according to Reibstein, "almost entirely

eviscerates any chance for most ICs and companies using their services from establishing the workers' IC status."

The expansion of real estate under the B prong, Reibstein said in an interview with FreightWaves, means "they're saying every place you go under the sun is going to be considered a company location." Even if a truck doesn't go to a company-owned terminal, he said, the wider definition means any activity could be considered under the new rule to be a "place of business," triggering the B prong.

Reibstein also wrote that the widening of the place-of-business definition appears to be in conflict with one of the legal precedents cited by the state as the reason for its changes, and is likely to provoke court challenges.

Reibstein noted in his blog that while there have been dozens of exemptions from AB5 in California, none as yet have been proposed in New Jersey in regard to its tightening of the ABC law.

Reibstein has been consistent in his views on the DOL IC rule: It isn't all that big a deal.

"The [letter from Harrison] has a very limited impact, and does not supplant state IC laws that have different and often stricter tests for IC status than the Fair Labor Standards Act," Reibstein wrote.

That statement echoed what he wrote when the rule was launched in January 2024: "The legal impact of the final rule, however, will hardly ripple the waters. After all, it is the courts that create law on this subject, not regulatory agencies."

Reibstein, in his interview with FreightWaves, noted that the first Trump rule replaced an Obama rule that was the precursor to and similar to the Biden rule. "Each successive administration for the past nine years has been trying to undo the prior administration's position on the test for independent contractor status," he said. "And the courts don't really care, because they have decades of cases where they have interpreted the FLSA in a manner consistent with the Supreme Court."

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