



REGULATORY POSITION

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Regulatory position of the Professional Insurance Agents of New Jersey Inc.

**RE: PROPOSED NEW RULES: N.J.A.C. 12:11—
APPLICATION OF THE ABC TEST**

Proposal number: PRN 2025-051

Submitted to: David Fish, Executive Director, Legal and Regulatory Services,
New Jersey Department of Labor and Workforce Development

I. Introduction

The Professional Insurance Agents of New Jersey Inc. respectfully submits these comments in strong opposition to the New Jersey Department of Labor and Workforce Development's proposal to adopt new rules under N.J.A.C. 12:11. Proposal number PRN-2025-051 would codify and significantly expand the Department's interpretation of the "ABC test" for determining independent contractor status under various state labor laws.

PIANJ is a trade association representing independent property and casualty insurance professionals throughout New Jersey. Our members provide individuals and businesses with expert advice, diverse coverage options, and personalized service. These professionals are not employees of insurance companies—they are licensed entrepreneurs, regulated by the New Jersey Department of Banking and Insurance, and are vital contributors to their local communities and economies.

II. Summary of concerns

While the Department's stated goal is to clarify worker classification standards under New Jersey law, the proposed regulation, as drafted, poses a serious threat to the independent insurance agency system, which has successfully served Garden State consumers for more than a century.

Specifically, the proposed rule would:

- undermine long-standing industry practices;
- ignore statutory exemptions for insurance producers under the Unemployment Compensation Law (N.J.S.A. 43:21-19(i)(7)(J));
- impose an overly rigid and expansive ABC test that many legitimate independent insurance agents could not meet;

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- misinterpret regulatory oversight as evidence of “employer control” under Prong A;
- blur the distinction between carrier and producer functions under Prong B, endangering longstanding distribution arrangements; and
- diminish the significance of licensing, business formation, and client diversification under Prong C—placing an unreasonable burden on regulated professionals to prove their independence.

III. The role of independent contractor status in the independent insurance agency system

New Jersey’s independent agency system is a cornerstone of consumer access and choice in the insurance marketplace. Licensed by the DOBI, independent agents are free to represent multiple insurance carriers, allowing them to tailor coverage recommendations to each client’s specific needs, rather than being limited to a single insurer’s offerings.

This model is made possible by the independent contractor status of producers. As self-employed professionals, these agents manage their own businesses, engage with clients directly, and choose how best to serve their communities. This autonomy results in competitive pricing, a broad array of product options, and personalized, unbiased advice—benefits that are passed directly to consumers.

Producers also have the flexibility to pursue additional licensure—such as licenses for financial or retirement products—allowing them to provide comprehensive service across multiple lines of business. Many choose independence precisely because it enables them to serve a wider range of clients with more agility and choice than would be possible in a traditional employment relationship.

Undermining this structure by imposing a misaligned employment classification standard would severely disrupt the availability and affordability of insurance products in New Jersey. It would likely shift the market toward a captive-agent model—narrowing consumer options, weakening competition, and diminishing the locally driven service that defines the independent agency system.

Maintaining the independent contractor status of licensed producers is not simply a workforce issue; it is essential to preserving a delivery system that has long protected New Jersey consumers through competition, accessibility, and trusted local relationships.

IV. Legal and historical context

Since 1941, New Jersey law has explicitly excluded insurance agents compensated solely by commission from the definition of “employment” under the Unemployment Compensation Law. This legislative exclusion reflects a clear recognition that such professionals operate as independent contractors and are not appropriately subject to employee classification under unemployment or wage statutes.

As noted in the original sponsor’s statement:

“... such agents are independent contractors and the commissions earned by them can form no practical basis for the ultimate payment of benefits to them....”—N.J. Assembly Statement (1941).

Despite this long-standing statutory framework, the proposed rule fails to acknowledge or incorporate this exemption. Instead, it seeks to apply a uniform, one-size-fits-all ABC test across multiple statutes, jeopardizing the legally recognized and carefully regulated independence of insurance producers.

The Department claims general authority to apply the ABC test to a broad array of labor laws, including the Unemployment Compensation Law, the Wage Payment Law, the Wage and Hour Law, and the Earned Sick Leave Law. However, it does so without addressing the specific statutory carveouts the Legislature has enacted for industries like insurance and securities. The proposed regulation would allow administrative interpretation to override express statutory exemptions—an approach that is both legally questionable and likely to generate significant litigation and compliance uncertainty.

Indeed, federal courts have affirmed the independent status of insurance producers. In *Walfish v. Northwestern Mutual Life Insurance Co.*, the U.S. District Court concluded that an agent compensated by commission and operating under a non-exclusive appointment was an independent contractor. The court found the agent to be free from control, to perform services outside the ordinary course of the company’s business, and to have maintained a separate, ongoing business. Although the case raised further questions about how the exemption applies under wage laws beyond the UCL, the factual analysis in *Walfish* strongly supports the conclusion that independent agents do not meet the definition of “employee” under the ABC test.

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While the Department's hearing officer suggested during the June 2025 public hearing that the UCL exemption would still apply, this assurance is not reflected in the text of the proposed rule. Without explicit language, producers remain exposed to inconsistent interpretations under other statutes—and left without the legal clarity their regulated status warrants.

To respect legislative intent and ensure uniform interpretation across labor laws, PIANJ urges the Department to include language in the final rule expressly recognizing that insurance producers licensed under N.J.S.A. 17:22A-26, et seq., are not subject to the ABC test. Failing that, a new rulemaking process should be undertaken with industry input to address this issue transparently and appropriately.

V. Industry-specific concerns

1. Prong A—control

The proposed rule treats regulatory oversight—such as compliance with DOBI-mandated practices—as potential evidence of employer control. For the insurance industry, such oversight is not optional; it is required by law to protect consumers. Treating compliance with regulatory obligations as indicia of employment fundamentally misunderstands the relationship between insurers, and their appointed producers, and threatens to penalize responsible adherence to DOBI rules.

2. Prong B—usual course of business

Under the proposal, any activity that generates revenue or contributes to a business's function may fall within the “usual course of business,” potentially classifying independent agents as employees of insurance carriers. However, insurers and producers serve distinct roles: insurers underwrite and assume risk; agents market and distribute. Courts—including in *Walfish v. Northwestern Mutual Life*—have recognized this separation. Ignoring this distinction risks collapsing an entire distribution model into a single legal framework that was never intended to apply.

3. Prong C—independently established business

The rule significantly undermines traditional indicators of independent contractor status, such as:

- possession of a DOBI-issued producer license;
- business registration or incorporation;
- professional liability insurance; and
- a diverse and independent client base.

By stating that these criteria are not, in themselves, sufficient to establish independence, the rule creates unreasonable and ambiguous hurdles for legitimate small businesses to prove their status—especially in industries like insurance, where such criteria are industry-standard and regulatorily mandated.

VI. Economic and consumer impact

If adopted without amendment, this rule would have far-reaching and damaging consequences, including:

- deterring insurance carriers from appointing in-state agents;
- shifting carrier relationships to out-of-state producers, weakening local service;
- forcing many New Jersey agencies out of business due to classification uncertainty;
- reducing product access, especially in underserved or inland communities; and
- undermining New Jersey’s consumer protection goals and broader economic policy priorities.

VII. Recommended amendment

To preserve the integrity of the independent agency system and align with existing law, PIANJ strongly urges the Department to incorporate a clear exemption for licensed producers into the final rule. We recommend the following language:

“Notwithstanding any provision in this rule to the contrary, pursuant to a written agreement which governs the provision of services of an independent contractor, a person shall not be classified as an employee for any purpose under any law, rule, or regulation if the person is an insurance producer or insurance agent licensed by the New Jersey Department of Banking and Insurance under the “Insurance Producer Licensing Act” (C.17:22A-26, et seq.); a broker-dealer, agent, investment adviser, or investment adviser representative registered or regulated by the New Jersey Bureau of Securities pursuant to the “Uniform Securities Law (1997),” P.L.1967, c.93 (C.49:3-47, et seq.); or registered or regulated by the Securities and Exchange Commission pursuant to the provisions of the Securities Act of 1933, 15 U.S.C. s.77a, et seq.; the Securities Exchange Act of 1934, 15 U.S.C. s.78a, et seq.; the Investment Company Act of 1940, 15 U.S.C. s.80a-1, et seq.; or the Investment Advisers Act of 1940, 15 U.S.C. s.80b-1, et seq.; or if the person satisfies the requirements to be exempt from being deemed to be in an employment relationship as set forth in R.S.43:21-19(i)(7)(J) in order to be deemed an independent contractor under

R.S.43:21-1, et seq. The person shall not be required to satisfy any other test for any other law, rule, or regulation, including, but not limited to, the tests set forth at or applied to P.L.1965, c.173 (C.34:11-4.1, et seq.) and P.L.1966, c.113 (C.34:11-56a, et seq.) to be deemed an independent contractor as provided in this section for purposes of any other law, rule, or regulation.”

This amendment would:

- uphold the statutory exemption already codified under the UCL;
- avoid unnecessary disruption to a long-established, well-regulated business model;
- protect consumer access to independent advice and product choice; and
- acknowledge DOBI’s primary jurisdiction over insurance professionals.

VIII. Conclusion

PIANJ supports efforts to prevent worker misclassification and protect vulnerable workers. However, this proposal—if applied indiscriminately—will harm legitimate, licensed professionals who have never been the target of misclassification concerns.

We urge the Department to:

- incorporate a clear exemption for licensed insurance producers; or
- withdraw and re-propose the rule with proper consultation and industry engagement to ensure that legitimate professional models, like the independent agency system, are not swept into an inappropriate regulatory framework.

PIANJ remains committed to working collaboratively with the Department to ensure that labor protections are advanced without jeopardizing New Jersey’s insurance marketplace, consumers, or small businesses.