

State of New Jersey
Department of Labor
Division of Employer Accounts

THREE TESTS USED TO DETERMINE INDEPENDENT SUBCONTRACTOR STATUS

Whenever services are performed for remuneration (including commissions, bonuses, and the cash value of compensation in kind), the question of whether such services are considered as performed by an independent subcontractor or a covered employee is determined by application of the three tests of Section 19 (i) (6) (A), (B), and (C) of the New Jersey Unemployment Compensation Law.

All remunerated services performed by an individual are deemed to be employment, unless it is established to the satisfaction of the Division that:

- A. "Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact." The fact that an individual is not supervised or instructed as to his/her working hours is not controlling. Service over which the employing unit has the right to terminate at any point in the relationship or to exercise control of the details of this work does not meet this test. In cases where the provisions of any contract differ from the actual incidents and circumstances surrounding the relationship, the facts will prevail.
- B. "Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed." This is a two-part test and satisfaction of either part will meet the requirements. Service which is essential to the nature of the business does not meet the first part of this test, regardless of whether any employee performs the same type of service. If there is no fixed place of business, services performed in whole or in part at a temporary work site or an area where customers or prospective customers are located will not meet the second part of this test.
- C. "Such individual is customarily engaged in an independently established trade, occupation, profession or business." This requires the individual's business activity to exist and continue to exist independently of, and apart from the particular service relationship; it must be a stable, lasting enterprise which will survive termination of the relationship. The test is not met merely because the employer relies on the individual's own efforts and ability. Some of the elements to be considered in applying this test are an office or business location separate from the individual's residence, possession of applicable business licenses, and business telephone listing, business cards and stationery, operation of owned/leased trucking equipment, special business equipment (other than tools of a trade), and filing of business (Schedule C) Federal tax return.