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Dear Mr. Fish:

I submit this comment in strong opposition to the New Jersey Department of Labor and Workforce Development's proposed regulations purporting to "codify" the ABC test for independent contractor classification. While framed as a restatement of existing law, the proposal is, in substance, a sweeping and unilateral redefinition of settled legal standards, one that would dramatically narrow the pathways to independent work in the state. The proposal raises profound legal, economic, and procedural concerns and should be withdrawn in its entirety.

The Proposal Mischaracterizes Existing Law and Substantively Alters the ABC Test

Despite claiming to "codify" existing law, the proposed regulations make substantial changes to each prong of the ABC test:

- **Prong A** is redefined to treat basic compliance and safety practices as evidence of control, including the use of digital platforms, location tracking for customer transparency, or ensuring insurance coverage. These are standard, often legally required, business practices—not indicia of employer-employee control.
- **Prong B** is artificially narrowed by redefining "places of business" to include a worker's own vehicle when used in transportation services. This reinterpretation effectively eliminates a key avenue of independent work under current New Jersey law and contradicts the Third Circuit's prior holding that New Jersey's test remained lawful precisely because it left this option open.
- **Prong C** is restricted by declaring that hallmarks of independent work—such as professional licensure, servicing multiple clients, or receiving a 1099 form—are "irrelevant." This approach minimizes real-world evidence of independence in favor of a presumption of employment.

These changes are **not codification—they are transformation**. By reframing routine practices and markers of autonomy as insufficient or irrelevant, the Department's proposal effectively flips the ABC test into an "employment presumption" standard, which is inconsistent with New Jersey's judicial precedents.

The Proposal Conflicts with Federal Law

The proposal squarely conflicts with the **Federal Aviation Administration Authorization Act (FAAAA)**, which preempts state laws that interfere with the services, routes, or pricing of motor carriers. The Third Circuit previously upheld New Jersey’s ABC test only because Prong B allowed motor carriers to classify drivers as independent contractors if they operated outside the “place of business.” By redefining a driver’s own vehicle as a “place of business,” the proposed rule closes that path, effectively preempting contractor models in the transportation industry and inviting a direct legal challenge.

Additionally, the proposed rule may place New Jersey in violation of **federal unemployment compensation standards**. Federal law limits unemployment benefits to eligible workers. App-based gig workers have repeatedly been deemed ineligible under federal guidance, including by the U.S. DOL and the NJDOL itself during the pandemic. By enabling payment of benefits to ineligible gig workers, the proposed regulation risks the loss of federal administrative funding and employer tax credits.

The Proposal Is Arbitrary, Capricious, and Unsupported by Evidence

The Administrative Procedure Act requires that rulemaking be evidence-based. The Department’s economic and equity justifications are threadbare and defy common sense.

- **Jobs Impact:** The Department’s claim that the proposal will have “no effect on jobs” is both logically and empirically false. Narrowing independent work pathways will inevitably lead to job losses—not just among contractors, but among traditional employees who benefit from the economic multiplier effect of gig-based businesses.
- **Equity Analysis:** The rule will disproportionately harm the very groups it purports to help. Women, caregivers, racial minorities, immigrants, and people with prior justice system involvement disproportionately rely on flexible, independent work. Eliminating these options will reduce—not enhance—their economic inclusion.

The Department fails to engage with extensive research documenting these effects and cites no countervailing data. This lack of justification renders the rule arbitrary and capricious under New Jersey law.

The Proposal Improperly Targets Specific Industries

Several provisions of the proposed rule appear designed to disadvantage specific sectors, including rideshare, trucking, and drywall installation. By preemptively declaring workers in these industries as employees, the rule eliminates fact-specific inquiry and substitutes a regulatory decree. This approach short-circuits individualized adjudication, undermines due process, and violates long-standing principles of employment law.

The Proposal Would Harm Workers, Public Safety, and New Jersey's Economy

The proposal not only threatens the livelihoods of thousands of legitimate independent contractors—it also introduces perverse consequences:

- **Loss of Flexible Work:** Independent contracting allows workers to earn supplemental income on their own schedules. Converting these opportunities to employment—where flexibility is lost—will force many out of the workforce entirely.
- **Public Safety Risks:** The rule punishes companies for exercising oversight in the name of safety and compliance. Treating legal compliance or safety monitoring as “control” discourages responsible contracting.
- **Business Uncertainty:** The sweeping nature of this change, combined with its inevitable legal challenges, will create regulatory uncertainty that chills investment, disrupts services, and slows job creation.

Conclusion

The proposed rule is legally flawed, economically unsound, procedurally deficient, and socially regressive. It upends settled law, contradicts federal standards, and undermines flexible work opportunities in a misguided attempt to expand employment classifications. We urge the Department to withdraw this rulemaking and engage in a more transparent, balanced, and evidence-driven process that supports both worker protections and economic freedom.

Respectfully submitted,

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