

# HR TIP OF THE WEEK



**TOPIC:** NJ/Independent Contractors/Employee Misclassification

 **LEGAL DEVELOPMENT:** Regulations from the New Jersey Department of Labor (NJDOL) clarifying the ABC test for determining if an individual is a W-2 employee or 1099 independent contractor are effective as of **October 1**. With two weeks left to comply, this TIP forecasts what's in store for HR and NJ employers. 1. Under the regulations, more individuals will be classified as employees rather than independent contractors. In fact, the NJDOL's test starts with the presumption that individuals are employees, unless proven otherwise. 2. The NJDOL will aggressively audit employers for compliance. If you have ever been subject to a NJDOL audit, you know that the information requests are expansive. These audits may cast a broader net to identify patterns of misclassification in your workforce. 3. With the potential for hefty backpay and penalty awards (plus the possibility of an additional 5% award based on the individual's gross wages for the last 12 months), employers can expect an uptick in these types of administrative actions.

 **HR TIP:** Is your workforce in compliance? If you don't know the answer to this question, you've got two weeks to work towards compliance. The first step is to identify which individuals are paid on a 1099. The next step is to determine whether your company can overcome the presumption that these individuals are employees. If your company can't pass the test, it's time to develop a plan for compliance, before an NJDOL investigator appears for an audit.



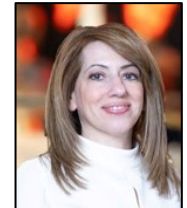
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## ABOUT ME

I work with HR and legal on the types of workplace issues that make you do a double take. I've been counseling employers and tackling their employment issues for two decades and going strong. I'm a Partner at Genova Burns and Chair of the Human Resources, Law and Compliance Practice Group.



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