

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

SEAN P. REDMOND
EXECUTIVE DIRECTOR, LABOR POLICY
EMPLOYMENT POLICY DIVISION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5384

November 13, 2019

The Honorable Stephen M. Sweeney
Senate President
New Jersey Senate
Trenton, NJ 08625

VIA ELECTRONIC MAIL

Dear Senator Sweeney:

On behalf of the U.S. Chamber of Commerce, I urge you and your colleagues to oppose Senate Bill 4204 (S. 4204), a bill that would amend New Jersey's code to severely restrict the ability of employers to utilize the legitimate services of independent contractors. The bill as written threatens to undermine longstanding business relationships by adopting a modified "ABC" test passed recently as Assembly Bill 5 (A.B. 5) in California. However, S. 4204 differs from A.B. 5 in critical ways that make this bill even more problematic and that provide ample reason to avoid rushing to pass this legislation.

A.B. 5 abandoned a relatively stable eleven-factor test for determining employment status after the California Supreme Court arbitrarily changed its own precedent and adopted a version of the so-called ABC test found in several states. Similar to New Jersey's current standard, the typical ABC test requires a business to meet three conditions to classify a worker as an independent contractor:

(A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

(B) the worker performs work that is outside the usual course of the hiring entity's business *or that the work performed is outside all the places of business of the hiring entity*; and

(C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Like A.B. 5, S. 4204 deliberately removes the second element from part B, which will make it exceptionally difficult to classify an individual as an independent contractor. However, because lawmakers in California realized just how sweeping it was, A.B. 5 also included numerous exemptions for employers in certain industries, something that S. 4204 fails to do. Moreover, after passing it barely two months ago, the California legislature already realizes that it may need to further amend A.B. 5 in its upcoming session to address the predictably ill effects of the bill.

To the extent that there may have been discussions about exempting many types of workers from S. 4204, the U.S. Chamber is supportive of those discussions. However, exemptions must also include legitimate independent contractors working for app-based platforms who provide their services while exercising a great deal of independence. In addition, New Jersey should retain part B of the test, specifically the language: “*or that the work performed is outside all the places of business of the hiring entity.*”

The U.S. Chamber does not support the misclassification of bona fide employees as independent contractors, and we understand the concerns motivating S. 4204. However, given the developments in California, New Jersey should not rush to enact legislation that will have a sweeping effect on employers. We cannot support the bill as drafted and urge you to oppose S. 4204 until a more reasonable approach can be considered.

Sincerely,

A handwritten signature in black ink that reads "Sean Redmond". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Sean P. Redmond
Executive Director, Labor Policy