

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

**GLENN SPENCER**  
SENIOR VICE PRESIDENT  
EMPLOYMENT POLICY DIVISION

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December 5, 2019

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

VIA ELECTRONIC MAIL

Dear Senator Sweeney:

The U.S. Chamber of Commerce appreciates your efforts to amend Senate Bill 4204 (S. 4204), legislation that deals with the definition of independent contractor under New Jersey law. As introduced, S. 4204 would have severely restricted the ability of employers across a range of industries from being able to continue the legitimate use of independent contractors by removing language from Part B of the ABC test, specifically that stating: “or performed outside of all the places of business of the enterprise.”

Restoring this language is critical. However, we are concerned that in so doing, the Senate may replace the word “enterprise” with “employer.” This seemingly minor change could have serious consequences because courts have considered “places of business of the enterprise” to mean physical structures whereas “places of business of the employer” could mean any location where an individual is performing work. Put simply, swapping “enterprise” for “employer” would negate the point of adding the whole clause back into Part B. Changing this language may also grant new rulemaking authority to the state DOL, further complicating an already complicated matter for New Jersey’s workers and businesses.

In addition, we are concerned with a potential change to Part C of the test, specifically striking the words “trade, occupation [and] profession.” Making Part C too restrictive in this manner could make it extremely difficult for many independent contractors, such as freelance journalists, educators, or performers to continue their respective trades.

New Jersey already has stringent laws on the books regarding misclassification. Given these laws, it is critical that the Senate takes its time to get the ABC test right and not unduly restrict the legitimate use of independent contractors.

Sincerely:

A handwritten signature in blue ink that reads "Glenn Spencer". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Glenn Spencer  
Senior Vice President, Employment Policy Division