

Electronic Alert

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NLRB Broadens Joint-Employer Test with Final Rule

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The National Labor Relations Board (NLRB) issued a Final Rule on the Standard for Determining Joint-Employer Status under the National Labor Relations Act (NLRA). The rule is effective December 26, 2023, and will expand the situations where multiple entities will be considered joint employers.

The NLRB's new standard looks to whether the entities have an employment relationship with the employees and codetermines one or more of the employees' essential terms and conditions of employment. The Final Rule defines "essential terms and conditions of employment" as:

- (1) wages, benefits, and other compensation;
- (2) hours of work and scheduling;
- (3) the assignment of duties to be performed;
- (4) the supervision of the performance of duties;
- (5) work rules and direction governing the manner, means, and methods of the performance of duties and the grounds for discipline;
- (6) the tenure of employment, including hiring and discharge; and
- (7) working conditions related to the safety and health of employees.

The new rule's key difference from the prior rule is that it does not require employers to actually exercise "substantial direct and immediate control" over the essential terms and conditions of employment. Under the new rule, an entity having the authority to codetermine the essential terms and conditions of employment will be sufficient to establish joint-employer status, regardless of whether an entity actually exercises that authority.

Joint-employer classification under the NLRA has many important impacts for organizations to understand, including that when entities are found to be joint employers, both can be liable for one entity's unfair labor practices. Joint employers also have a duty to bargain collectively with the employees' representative over terms and conditions of employment that the joint employer possesses the authority to control.

This Final Rule comes as one of many changes made to federal labor law in recent months. Employers should be aware of the impacts of joint-employer status and carefully assess whether this broader standard will create additional labor law obligations for their operations.

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