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BREAKING: Texas District Court Strikes Down NLRA Joint Employer Rule

Labor Relations Update on **March 10, 2024**

On March 8, just three days before the National Labor Relations Board's (the "Board") new joint-employer standard was set to take effect, Judge J. Campbell Barker of the U.S. District Court for the Eastern District of Texas struck down the new standard, delaying its implementation further.

In his opinion, Judge Barker held that the Board's joint-employer test is unlawfully broad because an entity could be deemed a joint employer simply by having the right to exercise indirect control over one essential term and condition of employment, even if the entity does not actually exercise that control. The Court stated that it would issue a final judgment shortly that will have the effect of vacating the pending rule.

Background

As we previously reported, on October 26, 2023, the Board issued a much-anticipated new standard for determining whether two or more employers are joint employers of particular employees within the meaning of the National Labor Relations Act (the "Act"). This new standard significantly relaxed the joint-employer requirements, permitting an entity to be found as a joint employer whether or not control is exercised and without regard to whether such exercise of control is direct or indirect.

Within weeks, and as previously reported, the United States Chamber of Commerce (the "Chamber") and a coalition of business groups filed the instant lawsuit against the Board, alleging the Board's newly-issued joint-employer rule is unlawful and should be struck down because it is arbitrary and capricious.

Around the same time, the Service Employees International Union ("SEIU") filed a petition with the District Court of Columbia Court of Appeals ("D.C. Circuit") to review the Board's new rule; the case before the D.C. Circuit remains pending.

Summary Judgment Decision Striking Down The Rule

Prior to analyzing the merits of the new joint-employer standard, Judge Barker began his decision by rejecting the NLRB's argument that the Eastern District of Texas lacked jurisdiction because any legal challenge to the joint-employer rule should have commenced in federal appeals court. The Court acknowledged that federal appeals courts provide the proper jurisdiction to enforce or dispute unfair-labor-practice allegations, "[b]ut neither the text, structure, nor purpose of the Act supports defendants' extension of that procedure to cover judicial review of prospective Board rulemaking."

Judge Barker then criticized the two-step test the Board set forth in the proposed joint-employer standard, which requires first, that the entity qualify as a common-law employer of the disputed employees, and second, only if it is a common law-employer, the entity must also have control over one or more essential terms and conditions of employment. Judge Barker agreed with the Chamber that the second test is always met if the first test is met, so the standard has just one step for practical purposes.

Judge Barker held that the joint-employer rule is invalid because it would treat some companies as the employers of contract or franchise workers even when they lacked any meaningful control over their working conditions:

> The rule "would treat virtually every entity that contracts for labor as a joint employer because virtually every contract for third-party labor has terms that impact, at least indirectly . . . essential terms and conditions of employment."

Judge Barker reasoned such "reach exceeds the bounds of the common law and is thus contrary to law." As a result, the Court vacated the new standard, and indicated that it will issue a final judgment declaring that the rule is unlawful. The Court stated that it expected the NLRB to follow the declaratory judgment, rendering an injunction unnecessary, but Judge Barker reserved his right to subsequently issue injunctive relief.

On March 9, the NLRB responded to the Court's ruling:

> “The District Court’s decision to vacate the Board’s rule is a disappointing setback, but is not the last word on our efforts to return our joint-employer standard to the common law principles that have been endorsed by other courts,” said Chairman Lauren McFerran. “The Agency is reviewing the decision and actively considering next steps in this case.”

Key Takeaways

The legality of the Board’s broad new joint-employer standard has been a hotly-litigated issue over the last several months, and is set to stay in the limelight. While for now, it appears the new rule will not be implemented on March 11, Judge Barker’s decision will not be the last word on the issue. The NLRB may appeal the ruling to the Fifth Circuit Court of Appeals, and a petition remains pending before the D.C. Circuit.

We will continue to monitor this important issue.

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