

There and Back Again: DOL Proposes New Joint Employer Rule

Law and the Workplace on April 28, 2026

The U.S. Department of Labor (DOL) has reentered the joint-employer arena with a new proposed rule that aims to bring uniformity to a fractured legal landscape.

The April 23, 2026 Notice of Proposed Rulemaking would establish a single standard for joint-employer status under the FLSA, FMLA, and the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”), filling a void since the 2021 rescission of the 2020 rule issued in the last days of the first Trump Administration.

For employers, the proposal will feel familiar. The DOL largely restores the 2020 framework while pulling back on the provisions that drew the most judicial scrutiny.

Structure Returns, But Flexibility Increases

The new proposed rule revises the 2020 rule’s approach to so-called “vertical” joint employment, where one company employs the worker but another company benefits directly from the employee’s work—for example, staffing company arrangements in which the staffing company directly employs the worker but the client company directs day-to-day work. The proposal reinstates a control-focused, four-factor framework for vertical joint-employer analysis, examining whether both employers exercise control over:

- Hiring and firing
- Supervision and control of schedules or working conditions
- Setting pay
- Maintaining employment records

But the DOL makes two key adjustments that materially affect risk:

1. Reserved Control Matters Again

The 2020 rule minimized the significance of contractual rights that were not actually exercised, which a New York district court found inconsistent with the statutory text.

The new proposal walks back the focus on whether the proposed joint employer actually exercises control day to day. Instead, it states that reserved control is relevant, even if actual control remains more important. Employers that rely on contractual oversight, which is common in franchise, staffing, and vendor models, may face renewed scrutiny even where day-to-day control is limited.

2. Economic Dependence Is No Longer Categorically Excluded

The 2020 rule explicitly rejected “economic dependence” as relevant to joint-employer status, which the court also found inconsistent with the FLSA, in which such economic realities are a core concept.

The proposal softens that position. It does not make economic dependence central, but it declines to exclude it outright.

Horizontal Joint Employment: Back to Basics

For horizontal joint employment (e.g., related entities sharing workers), the DOL largely reinstates the 2020 approach, focusing on:

- Common ownership or management
- Interrelated operations
- Degree of coordination between entities

This portion of the rule is unlikely to drive significant controversy.

A Key Expansion: One Rule Across Three Statutes

Unlike the 2020 rule, the proposal would apply the same joint-employer framework not just to the FLSA, but also the FMLA and MSPA. Employers may now face aligned joint-employer exposure across wage-and-hour and leave obligations, increasing the stakes of classification decisions.

Where This Lands Relative to the Courts

The proposal is best understood as an attempt to split the difference between the 2020 rule and broader circuit court standards.

- **Second Circuit:** Still more expansive, particularly through “functional control,” but the proposal moves closer to this approach than the 2020 rule did.

- **Ninth Circuit:** The source of the four-factor test, though courts there often apply a broader, multi-factor inquiry.
- **Fourth Circuit:** Remains more expansive than the proposal; DOL does not adopt its approach.
- **Other circuits (e.g., Third, Seventh, Eleventh):** Largely aligned with the proposal's control-focused framework.

What Employers Should Do Now

Even at the proposal stage, this is a good moment to reassess joint-employer risk—particularly in staffing and subcontracting arrangements, franchise systems, and vendor relationships involving on-site labor.

Focus areas include:

- Contract provisions that reserve operational control
- Actual (even indirect) supervision of workers
- Influence over pay rates or schedules
- Operational integration between entities

At the same time, the proposal confirms several helpful guardrails:

- No single factor is determinative
- Maintaining records alone is not enough
- Quality control and brand standards, without more, do not create joint-employer status
- Nonbinding recommendations are less likely to establish control

Issue	2020 Rule	2026 Proposal	Key Takeaway
Core test	4-factor control test	Same 4 factors	Structure largely unchanged
Reserved control	Minimal weight unless exercised	Relevant, but less than actual control	Expanded risk vs. 2020
Economic dependence	Explicitly excluded	Not excluded	More flexibility for regulators/courts
Horizontal employment	Included	Included	No major change
Statutes covered	FLSA only	FLSA, FMLA, MSPA	Broader exposure
Alignment with courts	Narrow vs. many circuits	Closer to mainstream	More litigation-resistant

Bottom Line

The DOL is not starting from scratch. Instead, it is rebuilding the 2020 framework in a more defensible form: keeping the administrable four-factor test, reintroducing flexibility around control and dependence, and extending the framework across multiple statutes.

The resulting standard will likely increase joint-employer exposure compared to 2020, while offering more predictability than the current patchwork of circuit law.

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