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NLRB's 2020 Joint Employer Standard Officially Returns

California Employment Law on **March 3, 2026**

In an anticipated move, the National Labor Relations Board (the "NLRB") formally reinstated its 2020 rule that controls when an employer is deemed a joint employer under the labor law. This rulemaking does not change the standard that the NLRB currently applies to determine joint employer status because of prior litigation before a federal judge. However, the rulemaking may settle—at least for the near future— a tumultuous history for the NLRB's joint employer standard, which has been the subject of longstanding litigation and repeated attempts at rulemaking.

Background

Under the National Labor Relations Act, "joint employment" refers to a situation where two or more separate entities allegedly codetermine employees' terms and conditions of employment, such as decisions about hiring, firing, disciplining, supervising, and directing employees. This issue typically arises in the context of contractor/subcontractor relationships, entities that engage temporary staff, parents/subsidiaries and franchisor/franchisee situations. If a company is deemed to be a joint employer of certain employees, it will share labor-law liability and the duty to bargain with the unions representing those employees.

In 2020, the NLRB during the first Trump administration initiated rulemaking to overturn the joint-employer standard established by the Obama administration in *Browning-Ferris Industries of California, Inc.*, 362 NLRB 1599 (2015).

In October 2023, the NLRB issued a new joint-employer rule, relaxing the standard established by the Trump administration and permitting a finding of joint-employer status even if an entity did not directly exercise control over an employees' terms and conditions of employment. Instead, it was enough if the employer had indirect or reserved control over these terms.

However, as we previously covered, the October 2023 rule never went into effect. Instead, just three days before the rule's effective date, Judge J. Campbell Barker of the U.S. District Court for the Eastern District of Texas struck down the new standard.

Reinstated Rule

The new rule formally reinstates the 2020 standard, which provides that, in order to be a deemed a joint employer, the employer *must* "share or codetermine" an employee's "essential terms and conditions of employment." The rule clarifies that, in order to "share or codetermine" terms and conditions of employment, an employer must "possess and exercise" substantial "direct and immediate control."

Importantly, under the reinstated rule, an employer *will not* be deemed to be a joint employer solely based on its indirect control or reserved right to control essential terms and conditions of employment.

The rule defines "essential terms and conditions of employment" as "wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction."

Takeaways

Though the new final rule does not institute a change to the test that the NLRB will apply to determine joint employer status, it aligns the NLRB's regulations with the standard it has been applying in joint-employer matters. After the whiplash-inducing changes to the standard in recent years, we anticipate that this rule will continue to be applied for the foreseeable future. However, there is a pending lawsuit in the U.S. District Court for the District of Columbia brought by the SEIU challenging the 2020 standard, SEIU v. NLRB, et al., No. 1:21-cv-02443-RC, that could again upend the joint employer standard.

We will continue to monitor for any changes to the joint employer standard.

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