

NLRB Issues Narrowed Joint Employer Rule

Written by Michael L. Rosen, Christopher Feudo, Leah S. Rizkallah

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Yesterday, the National Labor Relations Board (NLRB) released the final version of its new joint employer rule, which limits the circumstances in which franchisors and businesses that use employees hired by third parties can be required to bargain with employees of those third parties and held jointly liable for violations of federal labor law. The new rule – the result of a larger effort by the Trump administration to limit joint employer liability under federal employment law – rolls back a more expansive Obama-era standard established by the NLRB in 2015.

Under the new rule, which takes effect on April 27, 2020, a business is only considered a joint employer of another entity's employees if it has "substantial direct and immediate control" over the most significant elements of a worker's job, including discipline, hiring or firing. This is a meaningful retraction from the Obama-era standard, which made it possible for a business to be deemed a joint employer if it exercised indirect control or had the ability to exert control over the worker, regardless of whether control was in fact exercised.

The new joint employer rule has major implications for both labor and management. Businesses that are deemed to be joint employers of another entity's employees can be required to collectively bargain with unions representing those employees. Moreover, they can be held jointly liable for that third party entity's violations of federal labor law. The new rule reduces the risk of litigation and liability for businesses that rely on franchisees and subcontracted workers, and effectively eliminates any responsibility for such businesses to bargain with franchise or subcontracted workers. It also deals a major blow to labor unions, particularly those seeking to organize workers in franchisor corporations, such as McDonald's and other fast food companies.

The NLRB's new rule is an additional piece in an evolving, pro-employer landscape advanced by the Trump administration, which has taken steps to limit employers' joint liability for violations of federal labor and employment laws. As reported in our recent alert ([available here](#)), in January 2020, the Department of Labor released its own joint employer rule that reduced potential liability for violations of the Fair Labor Standards Act. The EEOC is also expected to release new rules limiting the scope of joint employer liability under federal anti-discrimination law in the near future.

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