

Department of Labor Releases New, Narrow “Joint Employer” Rule

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Last week, the U.S. Department of Labor (DOL) released the final version of its new “joint employer” rule. The rule limits the scenarios in which businesses will be treated as joint employers under the Fair Labor Standards Act (FLSA) and, therefore, reduces their potential liability for FLSA violations committed by their business partners.

The final rule, which goes into effect on March 16, 2020, requires that a business exercise control over workers in order to be considered their joint employer. The rule establishes a four-factor balancing test to determine joint employer status in situations where a worker performs work for one employer that simultaneously benefits another business.

This balancing test considers whether the business receiving the benefit: (1) has the power to hire or fire the worker; (2) supervises and controls the worker’s schedule or conditions of employment to a substantial degree; (3) determines the worker’s rate and method of payment; and (4) maintains the worker’s employment records. The DOL’s additional guidance on how to apply the test provides that a business must *actually exercise* – directly or indirectly – one or more of the four control factors to qualify as a joint employer. Contrary to a now-recinded guidance issued in 2016 under the Obama Administration, an employer’s reserved right or ability to exercise control is, alone, insufficient under the new rule.

The DOL’s new approach is a positive development for employers, as it signals the agency’s willingness to allow businesses to exercise more control and influence over their non-employee workers. Importantly, though, the new rule only applies to claims arising under the FLSA. The new rule does not address joint employer status under other federal employment laws or various state laws. However, the National Labor Relations Board and the Equal Employment Opportunity Commission are expected to release new rules limiting the scope of joint employer liability under federal labor and anti-discrimination law, respectively. We will continue to provide updates on developments in this area.

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