

NEWS & INSIGHTS

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# NLRB issues final rule on joint employer standard

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DECEMBER 5, 2023



A new standard for classifying a joint employer is going into effect before the end of the year, and it will mark a significant change for employers, who will now be classified as a joint employer at a much easier standard.

The National Labor Relations Board (NLRB) has [issued a final rule](#) that expands the standard for determining when two employers are considered joint employers under the National Labor Relations Act (NLRA). Joint employers are two employers that share the responsibility and liability for an employee or group of employees.

The proposed rule will render an increasing number of businesses that utilize independent contractors to be deemed joint employers. It also will significantly impact businesses that outsource employees, especially in the trucking and healthcare staffing industry, as well as those in the franchise industry. Additionally, organizations that use labor contractors – or temp agencies – will likely face increased exposure for labor law violations by those contractors and/or the agencies that employ them.

### *How the NLRB determines a joint employer*

The final rule is a significant departure from the NLRB’s prior 2020 joint employer standard that set a higher threshold. Under the 2020 standard, an employer could be classified as a joint employer if it *exercised* “substantial direct and immediate control” over essential terms and conditions of employment.

Under the new rule, an entity may be considered a joint employer of a group of employees if it has an employment relationship with them and shares or codetermines one or more of the employees’ essential terms and conditions of employment. Unlike the 2020 rule that considered whether the entity actually possessed and exercised such control, this new standard merely considers whether an entity has the *authority* to control, either directly or indirectly, essential terms and conditions of employment.

The NLRB has made clear that reserved control and indirect control are relevant considerations in the analysis. Essential terms and conditions of employment are defined exclusively as:

- Wages, benefits and other compensation
- Hours of work and scheduling
- The assignment of duties to be performed
- The supervision of the performance of duties
  
- Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline
- The tenure of employment, including hiring and discharge
- Working conditions related to the safety and health of employees

### *Preparing for the rule change*

In anticipation of this rule change – which goes into effect Dec. 23 – there is no better time to have your existing contracts with independent contractors, staffing or temp agencies and franchisees reviewed by experienced legal counsel. Policies and procedures should also be reviewed and updated to ensure clarity as to which party is responsible for various terms and conditions of employment. If your business does not yet have appropriate contracts, policies and procedures in place, now is the time to have them created.

If you have any questions about the final rule or how it could affect your business, please contact attorneys [Rick](#)

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### **Related People**

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