

Federal Court Strikes Down NLRB's Joint Employer Rule

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Late Friday, a U.S. federal district judge vacated the National Labor Relations Board's (NLRB) rule that would have broadened the scope of whether a company qualifies as a "joint employer" for purposes of labor law violations and collective bargaining obligations. The decision restores the more limited Trump-era rule but may be subject to appeal.

Under the prior (and current) rule, joint employer status is reserved for companies who exert "substantial and immediate control" over essential terms and conditions of employment. The new rule would have expanded this test to require consideration of a company's authority to control essential terms and condition, "whether or not such control is exercised, and without regard to whether any such exercise of control is direct or indirect." The new rule was expected to have significant impact on franchisors and on companies that regularly use temporary or contracted labor. For example, depending on the circumstances, it was feasible to expect that temporary workers might be deemed able to vote in a union election campaign or participate in bargaining.

Companies have received a bit of a reprieve with the restoration of the former, stricter standard for determination of joint employer status. However, this ruling is just the latest salvo in what continues to be a moving area of law, not only at the NLRB but among other federal and state agencies. Employers should periodically review their agreements with staffing agencies, franchisors, and other commercial entities to ensure that any provisions touching on the terms and conditions of employment appropriately mitigate any risk of joint employer status.

If you have any questions regarding joint employment relationships, workers' rights under the National Labor Relations Act or the NLRB, please contact [Joshua L. Schwartz](#) or any member of the [Barley Snyder Labor Law Practice Team](#).

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