

NLRB Rolls Back Expansive Joint Employer Standard

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In a 3-2 vote along party lines, the Republican-appointed National Labor Relations Board members overruled the joint employer standard set during the Obama era.

The decision reverts to a more stringent test under which employers can be found liable for violations of the National Labor Relations Act (NLRA).

In 2015, a Democratic-led majority ruled that a company and its contractors or franchisees can be deemed a single joint employer under the NLRA even if the company hasn't exerted direct control over workers' terms and conditions. The board had ruled that California-based Browning-Ferris was a joint employer of recycling workers provided by staffing company Leadpoint Business Services Inc. This decision opened the door for countless business entities to be subject to joint collective bargaining obligations that they may not have known existed.

The board's recent ruling reverts to the pre-Browning-Ferris joint employer standard that had operated for decades, requiring proof that a company have "direct and immediate" control over the terms and conditions employment. The board majority noted, "We return today to a standard that has served labor law and collective bargaining well, a standard that is understandable and rooted in the real world. It recognizes joint employer status in circumstances that make sense and would foster stable bargaining relationships."

Signals of a Pro-Business Agenda

The [recent ruling](#) follows on the heels of a memorandum issued by the newly appointed NLRB general counsel directing joint employer cases to be submitted to his office for advice. It also comes just days before Republican NLRB member Philip Miscimarra's term ends. The same week, the board issued [pro-business decisions on the NLRB's employer handbook standard](#) and an employer's obligation to bargain with micro-units, overturning highly controversial Obama-era NLRB decisions.

If you have questions about how any of the recent NLRB decisions and movement could affect your business, please [contact me](#) or any of the attorneys in [Barley Snyder's Employment Practice Group](#).

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