

## Turning Back the Joint Employment Clock

PUBLISHED ON

**June 8, 2017**

---

Determining the existence of joint employer liability has returned to its previous status as the U.S. Department of Labor [withdrew Obama-era informal guidance](#) on this topic.

The DOL is effectively rescinding [a January 2016 interpretation](#) - which even has been taken down from the DOL website - that the Wage and Hour Division issued. That interpretation of joint employment under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act moved away from DOL's long-standing guidance of assessing joint employment through a control test. Instead, it articulated a broader test that focused on the "economic realities" of a potential joint employment relationship. [Barley Snyder](#) attorneys have been tracking these developments for more than a year.

Many employers will find Wednesday's announcement comforting due to the expansion of potential joint-employer liability under the previous guidance. Presumably, the Wage and Hour Division of the DOL will continue to assess potential joint employer relationships under their previously existing and long-standing guidance. It is important to note, however, that the potential for joint employer liability exists under various statutes, not just the Fair Labor Standards Act or the Migrant and Seasonal Agricultural Worker Protection Act. Employers should continue to assess their risks for joint employer liability.

Any clients with questions regarding this development are encouraged to contact any member of our [Education Law](#) or [Employment Law](#) practice groups.