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Department of Labor's Newly Proposed Joint Employer Rule Short on Details at the Moment, But Not Short on Potential Impact on Businesses and Franchisors

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In a surprisingly fast move for the new Biden administration, the Department of Labor (DOL) sent a proposed rule to the White House on Wednesday, February 24 that may drastically change the joint employer analysis. The proposal's title, "Joint employer status under the Fair Labor Standards Act," is essentially the only thing known about the proposal at this time. In fact, even days later there is still nothing on the DOL's website about this new regulation. However, we would like to offer insights regarding speculated substance and the potential implications it will have on business and franchising.

The DOL's action shows the agency likely wants to quickly roll back the standards set during the Trump era. The Trump administration's rule took effect in March 2020 and narrowed circumstances by which businesses can be deemed joint employers. The rule adopted a four-factor balancing test to assess whether a purported employer: (1) hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records. No single factor is dispositive in determining joint employer status, and the weight given to each factor varies depending on the circumstances. However, the rule was not without issues of its own and a federal Judge in New York ruled that the regulation was illegal, inconsistent with the FLSA, and "arbitrary and capricious." While the Second Circuit reversed the decision days after Biden was sworn in, the future landscape is still unclear.

It appears that the Trump administration's rule may be coming to a quick end. While there is little information about the substance of the proposal, the regulation will likely return to the Obama administration's broader rule that often saw corporations held accountable for the labor standards of their affiliates, franchisees, and subcontractors. While a new proposal is not unexpected given the vast differences between the Trump and Biden administrations, the swift moves likely mean businesses should prepare sooner rather than later for changes to their business models.

Our [Labor and Employment team](#) will continue to monitor the developments related to the joint employer issue. In the meantime, should you have any questions or issues, please feel free to contact either [Xeris Gregory](#) or [Jennifer Curry](#).