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Relief for Employers: NLRB Formally Reinstates Direct Control Joint Employer Test

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The National Labor Relations Board (NLRB) formally reinstated its 2020 joint-employer rule on February 26, 2026, restoring it as the governing standard under the National Labor Relations Act (NLRA). The now reinstated 2020 rule requires a company to exercise "substantial direct and immediate" control over another employer's employees in order to be considered joint employers.

During the first Trump administration, the NLRB adopted the 2020 joint-employer test. Under that test, businesses could only be considered joint-employers of another employer's employees if the business exercised "substantial direct and immediate control" over the "essential terms and conditions" of the workers' employment.

Then, under the Biden administration in 2023, the NLRB issued a final rule revoking the 2020 joint-employer test and instituting a much more expansive test that found joint-employment where a company exercised control over or had the right to control any conditions of the workers' employment, even if the control was indirect or reserved.

The 2023 rule was vacated by the U.S. District Court for the Eastern District of Texas prior to becoming effective. As such, the 2020 Rule remained in effect, but questions lingered as to whether and how the NLRB would enforce the Rule. We now have the answer.

The Reinstated 2020 Standard

Under the reinstated rule, "an employer . . . may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment." In order to establish that, "the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees." Essential terms and conditions of employment means "wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction."

What Do Employers Need To Know and Do Now?

The test for determining joint-employment can have significant legal consequences for employers. Under the NLRA, these consequences can include joint liability for unfair labor practice charges brought before the NLRB as well as obligations relating to the recognition and bargaining with unions, and being bound by collective bargaining agreements.

Now that the joint-employer test under the NLRA is clear, employers should take the following steps to ensure they are not creating joint-employer relationships:

- Review and evaluate the control provisions in existing franchise, staffing, and vendor contracts to ensure compliance with the Rule;
- Audit and evaluate the day-to-day operational realities involving any contingent or temporary workers to ensure compliance with the Rule;
- Consider training management personnel to avoid exercising direct control over non-employees;
- Keep up to date on the latest developments from the courts and NLRB; and
- Consult with counsel to discuss joint-employer risks and compliance tactics.

Finally, it is important to note that the NLRB's joint-employer rule does not affect joint-employer tests under other laws, such as the Fair Labor Standards Act.

For any questions about joint-employment and best practices for compliance, please contact the author, [Dean J. Shauger](#), or any member of the [Labor & Employment Group](#).