

U.S. Department of Labor Issues Final Rule on Joint Employer Regulations Under the Fair Labor Standards Act

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On January 12, 2020, the United States Department of Labor (“DOL”) issued its final rule under the Fair Labor Standards Act (“FLSA”) governing joint employer status, which significantly narrows the scope of joint employer liability.

Under the prior Administration, the DOL issued guidance that broadly interpreted joint employment relationships, particularly with respect to franchises and staffing agencies. The current Administration, however, at the urging of businesses, has been attempting to limit the scope of joint employer liability. This new rule, which takes effect on March 16, 2020, accomplishes this goal. The Secretary of Labor, Eugene Scalia, commented that this rule will further the current Administration’s efforts to address regulations that hinder the American economy and promote economic growth.

The new DOL rule establishes a four-factor balancing test to determine joint employment. The factors are:

1. Who hires or fires the employee;
2. Who supervises or controls the employee’s work schedule or conditions of employment to a substantial degree;
3. Who determines employees’ pay rates and method of payment; and
4. Who maintains employment records for the employees.

No one factor is dispositive of the outcome. And importantly, the rule

makes clear that the ability of a putative joint employer to exercise control over the four factors is not enough; actual exercise of control is required. Further, the rule explains that joint employer status will not be more likely because the putative joint employer provides sample forms or policies to the employer; offers a health or retirement plan to the employer or participates in the same with the employer; maintains a joint apprenticeship program with the employer; or allows the employer to operate at its location.

Although this rule does not affect joint employer status outside of the FLSA context, it is expected that this rule will be viewed by other federal agencies as a guide to whether joint employer status exists under their own rules.

If you have any questions on this rule, please feel free to contact an attorney in the Labor, Employment and Employee Benefits Group.