
NLRB's New Joint Employer Rule Requires Direct Control

By Paul E. Starkman / Feb 26, 2020

In its new Final Joint Employer Rule, the National Labor Relations Board ("NLRB") states that one entity will be considered the joint employer of another company's employees only if the alleged joint employer possesses and exercises substantial direct and immediate control over the "essential terms" of employment of the other company's employees.

The NLRB's new Final Rule defines "essential terms" of employment as only wages, benefits, hours of work, hiring, discipline, supervision, and direction.

Under the prior version of the joint employer standard in effect since 2015, a business could have been a joint employer if it exhibited "indirect control" over the employees of a franchisee or staffing contractor or if it reserved the right to exert such control. The new Final Rule makes it clear that joint-employer status cannot be based solely on indirect influence or a contractual reservation of a right to control that has never been exercised.

As a result of the new Final Rule, franchisors (for example) are now less likely to be deemed joint-employers with franchisees in federal labor law disputes involving the franchisees' employees. The impact of the Final Rule is significant because joint employers:

- must collectively bargain about the terms and conditions of employment;
- may be picketed during labor disputes; and
- may be jointly and severally liable for an employer's unfair labor practices.

The NLRB's Final Rule goes into effect on April 27, 2020. Other federal agencies are expected to issue their own joint employer rules later this year.