



Labor and Employment Law Practice Group
GOODSILL ALERT

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**NATIONAL LABOR RELATIONS BOARD RESTORES BUSINESS-FRIENDLY
JOINT- EMPLOYER RULE**



In a trend reversing employee-friendly standards under the Obama administration, the National Labor Relations Board (NLRB) announced it is reverting back to a joint-employer rule that may benefit many companies, particularly franchisors and companies who utilize subcontractors. Under the new rule, a business must possess and exercise substantial direct and immediate control over one or more essential terms and conditions of employment, which includes wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction, of another company's employees to be deemed a joint-employer. "Substantial direct and immediate control" means that an entity needs to have regular or continuous consequential effect on an essential term of employment of another's employees. The control is not "substantial" if it is sporadic, isolated, or de minimis.

The rule provides further clarity regarding what constitutes "direct and immediate control" as to each "essential term and condition of employment." For example, "direct and immediate control" with regards to wages means that a company would need to actually determine the wage rate, salary, or other rate of pay to be paid to another employee's individual employees or job classifications. However, entering into a cost-plus contract with another entity would not constitute "direct and immediate control" over wages.

Under the prior *Browning-Ferris* standard, a business could be deemed joint employers by merely showing indirect evidence of control over working terms and conditions. With this reversal of *Browning-Ferris*, indirect evidence and/or contractually reserved control over essential terms of employment may be considered when determining joint-employer status, but it will not give rise to this status in itself. The final rule also clarifies that contractors will not be converted into a joint employer by routine elements of an arm's length contract.

NLRB Chairman John F. Ring announced the final rule on February 25, 2020, stating: "This final rule gives our joint-employer standard the clarity, stability, and predictability that is essential to any successful labor-management relationship and vital to our national economy." He added that the final rules will provide employer's certainty in structuring business relationships, while providing employees with a better understanding of their circumstances and unions clarity on whom they have a collective-bargaining relationship.

The final rule will go into effect on April 27, 2020.



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