

LEGAL UPDATE

DOL Adopts New Joint Employer Determination Test

On Jan. 12, 2020, the U.S. Department of Labor (DOL) [announced](#) a new four-factor balancing test to determine whether two or more organizations should be considered “joint employers” under the Fair Labor Standards Act (FLSA). The [final rule](#) establishing the new test becomes effective **March 16, 2020**.

Joint Employment

Joint employment or co-employment situations arise when two or more organizations share the control and supervision of one or more employees.

The DOL holds joint employers equally and individually responsible for compliance with labor and employment laws. The DOL looks at joint employment situations to prevent scenarios where one organization avoids complying with labor standards by using another employer as a “shield.”

The New Test

The final rule requires the DOL to examine whether a potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
- Determines the employee’s rate and method of payment; and
- Maintains the employee’s employment records.

However, the rule also clarifies that additional factors may be considered as necessary.

Please note that this final rule and new test apply only to joint employment status for FLSA compliance and do not address joint employment status under other federal employment laws.

Provided to you by **Cowden Associates, Inc.**

Next Steps for Employers

The DOL has the authority to enforce full compliance with labor standards against one or all joint employers.

To avoid violations, employers should:

- Become familiar with this final rule;
- Evaluate whether they are in a joint employment situation; and
- Identify any potential areas of non-compliance by joint employers

This rule is intended to add certainty regarding what business practices may result in joint employer status.

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