

LEGAL UPDATE

NLRB Issues New Joint-employer Final Rule

On Feb. 25, 2020, the National Labor Relations Board (NLRB) [announced](#) a new [joint-employer final rule](#), which becomes effective **Apr. 27, 2020** and applies to labor issues related to the [National Labor Relations Act](#).

The New NLRB Joint-Employer Standard

The NLRB is changing the standard it uses to determine whether employers are considered joint employers. Specifically, the NLRB is abandoning its decision in [Browning-Ferris Industries of California, Inc.](#) to return to the previous standard of “**substantial direct and immediate control**” over essential terms and conditions of employment of another employer’s employees.

The NLRB’s new standard follows the U.S. Department of Labor’s (DOL) new [FLSA joint-employment determination test](#). Both tests focus on the amount of control an employer exerts over the employment relationship.

Joint Employment

Joint employment situations can happen when two or more employers share personnel hiring, supervision and management practices. Whether joint employment is by design or unintentional, joint employers are equally:

- Required to bargain with the union that represents jointly employed workers;
- Liable for unfair labor practices committed by other joint employers; and
- Subject to union picketing or other economic pressure if there is a labor dispute.

Next Steps for Employers

Employers should review the final rule and determine whether they are in joint employment relationships based on the updated standard. Employers in these relationships should also determine whether the other joint employers in the relationship are in compliance with labor and employment laws.

Provided to you by [Cowden Associates, Inc.](#)

Important Definitions

- **Essential terms and conditions of employment** means wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction.
- **Substantial direct and immediate control** means direct and immediate control that has a regular or continuous consequential effect on an essential term or condition of employment of another employer’s employees. Such control is not “substantial” if only exercised on a sporadic, isolated, or de minimis basis.

The NLRB is abandoning its Browning Ferris decision to return to the “substantial direct and immediate control” standard.

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