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BLOGS

Labor & Unions

NLRB New Joint-Employer Standard Scheduled to Take Effect on 2/26/2024

On October 26, 2023, the National Labor Relations Board (“NLRB”) issued its [Final Rule](#) addressing the Standard for Determining Joint Employer Status under the National Labor Relations Act (“NLRA”). The Final Rule rescinds the prior rule enacted in 2020 and expands the scope of joint employment by including indirect control in the joint-employer standard.

The Final Rule establishes that, under the NLRA, two or more entities may be considered joint employers of a group of employees if each entity has an employment relationship with the employees and if the entities share or codetermine one or more of the employees’ essential terms and conditions of employment. Under the Final Rule, a business is a joint employer if it has the right to exercise control over any of the essential terms and conditions of employment, even if it never exercises such control, and even if the only way it could exercise such control would be through an intermediary.

The essential terms and conditions of employment under the Rule are defined as:

1. wages, benefits, and other compensation;
2. hours of work and scheduling;
3. the assignment of duties to be performed;
4. the supervision of the performance of duties;
5. work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
6. the tenure of employment, including hiring and discharge; and
7. working conditions related to the safety and health of employees.

For purposes of collective bargaining, once an entity is deemed a joint employer, it will be required to bargain over those essential terms and conditions that it has authority to control.

There are pending legal challenges to the Final Rule which may alter its application, but until those challenges are resolved, the Final Rule is scheduled to take effect on February 26, 2024.