

## THE DOL UNVEILS SIGNIFICANT REVISIONS TO THE FLSA'S JOINT EMPLOYER RULE

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Under the Fair Labor Standards Act (FLSA), the term “employer” is broadly defined. As a result, the U.S. Department of Labor (DOL) recognizes that, under certain circumstances, an employee can have two or more employers and each business can be held jointly responsible for FLSA wage and hour violations – such as failing to pay minimum wage or overtime.

However, on January 12, 2020, the DOL announced a final rule significantly narrowing the likelihood that multiple businesses will be deemed “joint employers.” The new rule, which takes effect on March 16, 2020, establishes a four-factor balancing test that requires an assessment of whether the 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.

No single factor is dispositive and the appropriate weight to give each factor will vary depending on the jurist overseeing the matter and the particular circumstances of the case.

In addition to the four-factor balancing test, the final rule clarifies that the following factors do not influence the joint-employer analysis:

- Having a franchisor business model;
- Providing a sample employee handbook to a franchisee;
- Allowing an employer to operate a facility on the company’s grounds;
- Jointly participating with an employer in an apprenticeship program;
- Offering an association health or retirement plan to an employer or participating in a plan with the employer; and
- Requiring a business partner to establish minimum wages and workplace-safety, sexual-harassment-prevention and other policies.

According to the DOL, these revisions are necessary to “promote certainty for employers and employees, reduce litigation, promote greater uniformity among court decisions, and encourage innovation in the economy.”

The rule is likely to have the greatest effect on franchise businesses, staffing agencies, construction contractors who utilize subcontractors, and companies that outsource services such as cleaning and maintenance.

If you have any questions regarding FLSA compliance, please contact any member of Bodman’s Workplace Law group for guidance.



#### ABOUT THE AUTHOR

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*Brent R. Scott concentrates his practice on advising and representing companies in all aspects of employment, labor, and general business law matters across multiple industries.*

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