

NLRB Revises Joint-Employer Standard

By: Cameron D. Ritsema, Member, Workplace Law Group

The National Labor Relations Board (“Board”) has taken action to return to a more definite joint-employer framework tied primarily to the exercise of substantial direct and immediate control. This framework reshapes how businesses may be held responsible for obligations involving contracted, franchise, or otherwise shared workforces. Below is what employers need to know.

Background on the NLRB Joint-Employer Standard

On October 27, 2023, the Board published a final rule (2023 Rule) that rescinded and replaced a 2020 rule regarding the standard for determining joint employer status under the National Labor Relations Act. On March 8, 2024, the U.S. District Court for the Eastern District of Texas issued an order vacating the 2023 Rule. Given this background, the Board is seeking to revise its rules and regulations to replace the vacated 2023 Rule with the previous version of its rules that remain in effect.

February 2026 Revisions

On February 25, 2026, the Board revised its rules regarding joint employer consideration to constitute joint employment “only if” the “employers share or codetermine the employees’ essential terms and conditions of employment.” In evaluating whether employers “share” or “codetermine” the essential terms and conditions of employment, the Board’s rule will require that the entity “possess and exercise such substantial direct and immediate control over one of more essential terms and conditions” of employment. The Board recognizes a wide array of essential employment terms and conditions including items such as wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.

The rule specifies that “indirect control over essential terms and conditions” and/or “contractually reserved but never exercised authority over the essential terms and conditions of employment” is probative of joint employer status, but only to the extent that it “supplements and reinforces the exercise of direct and immediate control over one or more essential terms and conditions of employment.

Practical Implications for Employers

Employers should prepare for scrutiny of:

- Contractual provisions giving a business the right to set schedules, discipline workers, or determine work processes, even if never exercised.
- Oversight of safety rules, productivity metrics, or performance standards may now be viewed as indirect control.
- Franchisors, general contractors, and businesses relying on staffing agencies are particularly vulnerable.

Recommendations for Employers

To navigate compliance concerns:

- Audit contractual language involving staffing agencies, franchisees, subcontractors, and vendors.
- Limit reserved control where possible; ensure operational oversight is necessary and well-documented.
- Train supervisors to avoid engaging in conduct that could be construed as indirect control over another entity's employees.

Please contact the author, Cameron Ritsema (616-205-4358 | critsema@bodmanlaw.com) or any member of Bodman's [Workplace Law Group](#) if you have questions regarding any of the information above. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

BODMAN'S WORKPLACE LAW GROUP

JOHN DAVID GARDINER <i>Chair</i> 616-205-3123 jgardiner@bodmanlaw.com	REBECCA C. SEGUIN-SKRABUCHA <i>Vice Chair</i> 248-925-1936 rseguin-skrabucha@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	KERRY K. CAHILL 248-743-6046 kcahill@bodmanlaw.com
JOHN C. CASHEN <i>Of Counsel</i> 248-743-6077 icashen@bodmanlaw.com	MACKENZIE E. CLARK 248-925-1926 mclark@bodmanlaw.com	AMANDA MCSWEEN EMPEY 313-392-1056 aempey@bodmanlaw.com	GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com
AARON D. GRAVES 313-392-1075 agraves@bodmanlaw.com	MICHELLE L. KOLKMEYER 248-743-6031 mkolkmeyer@bodmanlaw.com	CHRISTINA L. NECHIPORCHIK 734-930-2495 cnechiporchik@bodmanlaw.com	KAREN L. PIPER <i>Of Counsel</i> 248-743-6025 kpiper@bodmanlaw.com
CAMERON D. RITSEMA 616-205-4358 critsema@bodmanlaw.com	DAVID B. WALTERS 248-743-6052 dwalters@bodmanlaw.com		