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DOL Proposes Joint Employer Rule: Key Implications for Employers

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The U.S. Department of Labor (DOL) has proposed a new joint employer rule that could significantly expand employer liability under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The new proposal would create a single nationwide standard for determining when multiple entities may be deemed joint employers — an important development for businesses that rely on staffing agencies, subcontractors, franchise models, or other multi-entity workforce arrangements. The proposed rule, which was announced April 22, 2026, is now open for a 60-day public comment period.

Regulatory History

The DOL has had no regulatory guidance on joint employment under the FLSA since the Biden DOL rescinded the then-existing guidance without replacing it. The prior rule — adopted in 2020 by the first Trump administration — focused on whether a potential joint employer *actually* exercised control over another entity's workers. Later that year, a federal judge in the Southern District of New York largely vacated the rule, concluding that the rule's narrow focus on "actual" rather than "reserved" control, was inconsistent with the FLSA's expansive statutory definitions of "employer," "employee," and "employ." Rather than defend the rule, the Biden

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administration decided to abandon it, but never adopted its own standard.

Without a uniform rule, courts across the country have applied varying and sometimes conflicting tests, creating uncertainty for employers operating in multiple jurisdictions. The DOL's news release explains that the proposed rule "seeks to address the dearth of departmental regulatory guidance by proposing a single nationwide standard that both derives from commonalities in federal court precedent where available and resolves significant differences among the circuit courts where they exist."

The Proposed Rule: Vertical and Horizontal Joint Employment

A central feature of the proposed rule is the long-recognized distinction between the vertical and horizontal forms of joint employment.

Vertical Joint Employment

Vertical joint employment arises when a worker is jointly employed by two or more entities that simultaneously benefit from the employee's work. It typically involves businesses that are either higher or lower than the other in a business structure, such as general contractors and subcontractors, franchisors and franchisees, or staffing agencies and their clients.

To determine whether two entities are vertical joint employers, the DOL proposes a four-factor balancing test, which asks whether the potential joint employer: (1) hires or fires the worker; (2) supervises and controls the worker's schedule or conditions of employment to a substantial degree; (3) determines the worker's rate and method of pay; and (4) maintains the worker's employment records. Importantly, no single factor is dispositive, and the determination depends on all facts in the particular case.

The most notable departure from the vacated 2020 rule concerns the treatment of "reserved" control over workers, that is, the contractual authority to hire, fire, or supervise another entity's workers, even if not exercised. Under the 2020 rule, only the actual exercise of control was relevant to the analysis. Under the proposed rule, a potential joint employer's contractual or reserved authority to act with respect to the worker is a relevant consideration, though the actual exercise of such authority carries greater weight in the analysis. The proposed rule also contemplates consideration of additional factors, including whether the employee is economically dependent on the potential joint employer. However, these supplemental factors are generally considered less relevant, and where the four main factors point in one direction, additional factors are unlikely to change the outcome.

The proposed rule also indicates that the following factors are *not* relevant to the vertical joint employer analysis but instead relate to the separate question of whether a worker is an employee or independent contractor: (1) whether the employee is in a job requiring special skill, initiative, judgment, or foresight; (2) whether the employee has the opportunity for profit or loss based on managerial skill; and (3) whether the employee invests in equipment or materials required for the work or the employment of helpers.

Horizontal Joint Employment

Horizontal joint employment arises where an employee works separate hours for two or more employers in the same workweek, and the employers are "sufficiently associated" with each other with respect to the employment. The proposed rule provides the example of a cook who works 30 hours at one restaurant and 15 hours at another restaurant under common ownership could be a jointly employed worker.

Under the proposed rule, employers will generally be "sufficiently associated" if: (1) there is an arrangement between them to share the employee's services; (2) one employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or (3) they share control of the employee by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer. The consequence of a horizontal joint employment finding is that all hours worked for each employer must be aggregated for purposes of overtime and FLSA compliance.

Exclusions For Certain Common Business Practices

The proposed rule also provides that certain routine business practices do not, standing alone, make a joint employment finding more or less likely. These include:

- Contractual provisions related to health, safety, or legal compliance, including anti-harassment policies, background checks, and workplace safety protocols;
- Providing a sample employee handbook or other forms to another employer;
- Offering an association health plan or association retirement plan to another employer or participating in such a plan with the employer;
- Jointly participating in an apprenticeship program with another employer;
- Operating as a franchisor or entering into a brand and supply agreement, or using a similar business model; and
- Quality control standards to ensure the consistent quality of the work product, brand, or business reputation.

These carve-outs are particularly relevant to franchisors, which have faced sustained uncertainty regarding whether standard brand-protection

activities could give rise to joint employment liability.

Key Takeaways for Employers

The proposed rule represents the DOL's most comprehensive effort in recent years to establish a uniform standard for joint employer determinations. Employers should use the comment period as an opportunity to both influence the rulemaking process and proactively assess their own exposure if these standards are finalized.

To ensure they are prepared if the proposed rule is finalized, employers should audit the degree of operational control they exercise (e.g., supervision, scheduling, pay practices), and the control they have reserved by contract, over workers employed by third parties. Employers should keep in mind that, under the proposed rule, the DOL will evaluate actual practice, not just contractual terms, in determining whether a joint employment relationship exists.

Akerman's labor and employment team is closely monitoring this rulemaking and will provide updates as the rule moves through the comment period and toward finalization. For questions about how the proposed rule may affect your workforce arrangements, please contact your Akerman labor and employment attorney.
