

Department of Labor Revises Joint Employment Regulations

By Nathan Pangrace

On January 12, 2020 the Department of Labor (DOL) announced a final rule revising its regulations on joint employment under the Fair Labor Standards Act (FLSA). The new rule provides guidance for determining joint employer status when an employee performs work for his or her employer that also benefits another business.

The rule clarifies that an employee's economic dependence on a business does not determine whether that business is a joint employer under the FLSA. Businesses will not be considered joint employers based upon their business model alone. In practice, the revised rule means that a franchisor will not be considered a joint employer with its franchisee just because of their franchise agreement. Further, an employer will not be considered a joint employer simply because it oversees a contractor or subcontractor's quality control standards, health and safety requirements, or compliance with wage and hour laws.

When two businesses are joint employers under the FLSA, they share joint responsibility for paying employees minimum wages and overtime. The revised regulations adopt a four-part balancing test to determine whether two or more businesses jointly employ workers. The four factors are: (1) whether a business can hire and fire employees, (2) whether it controls their schedules or conditions of employment to a substantial degree, (3) whether it determines workers' pay rates and the methods by which they are paid, and (4) whether it maintains workers' employment records. In general, the revised rule makes it harder for businesses to be held liable when franchisees or contractors violate the FLSA.

The new rule is one of several regulations on joint employment that federal agencies in the Trump Administration have recently proposed. The EEOC will also release a rule clarifying when a business is a joint employer under federal employment discrimination laws such as Title VII and the ADA. The National Labor Relations Board (NLRB) will also finalize a similar rule under the National Labor Relations Act. The revised joint employment rule reverses the course of the Obama Administration, which broadened liability for joint employment under the FLSA in 2016. Trump rescinded that guidance one year later. The revised standard is the first time the DOL has overhauled joint employment regulations since the 1950s.

The DOL will publish the final rule in the Federal Register at the end of this week. The new rule is effective March 16, 2020. For additional guidance regarding the new joint employment rule and the fair labor standards act, please contact one of the Roetzel attorneys listed below.

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