

Joint Employer Status

New Rule Increases Risks to Thousands of Firms

THE NATIONAL Labor Relations Board has issued a final rule that expands the definition of what's considered a joint-employer relationship and increases employers' potential liability.

Under the rule, two or more entities may be considered joint employers if they share one or more employees and they both can determine the workers' essential terms and conditions of employment. If a company is deemed a joint employer with another entity, each can be held liable for labor law violations that the other commits.

The new NLRB rule applies to almost all industries, but will have the most effect on companies that use staffing or temp agencies, firms that are third party employers, and franchisors.

The rule repeals and replaces a rule implemented during the Trump administration that had made it more difficult to qualify as a joint employer under the National Labor Relations Act.

Essential terms and conditions of employment

Specifically, the new rule states that an entity may qualify as a joint employer if it retains the authority to control at least one of the following essential terms and conditions of employment (whether or not such control is exercised, and whether it is direct or indirect control):

- Wages, benefits and other compensation;
- Hours of work and scheduling;
- Assignment of duties to be performed;
- Supervision of the performed duties;
- Work rules and directions governing the manner, means and methods of the performance of duties and the grounds for discipline;
- Tenure of the employment, including hiring and discharge; and
- Working conditions related to the safety and health of employees.

For companies that use temp agencies or staffing companies, the new rule poses a significant risk. If the NLRB determines a joint employment relationship, the company that pays a temporary agency for workers could be subject to liability or unfair labor practices committed by the agency.

Similarly, franchisors could be held liable for the labor actions of their franchisees.

The takeaway

The new rule takes effect December 26 on a prospective basis, meaning it applies to any cases filed on or after that date.

If your company uses temp or staffing companies or third party employers, you may want to review the contracts and memorandums of understanding with the other entity to clearly define the employment relationships, including roles, responsibilities and the extent of control exerted over the seven essential terms and conditions of employment.

The NLRB's new rule is likely to face litigation, as prior rules have, and challenges from Congress. ❖



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Keep Hot Food Warm and Covered

Food safety

The other big issue is food safety. It's not uncommon for food from a catering service to sicken partygoers.

At an office party, foodborne illness can occur when people eat certain items that were either undercooked or left out at room

temperature for too long.

Eggs, raw egg products (e.g., eggnog), meat, seafood, and even fruits and vegetables (if not properly washed) are some of the most common offenders. Add to that the possibility of poor hygienic practices by the caterer's staff. ❖

HOLIDAY FOOD SAFETY ADVICE

- Observe the two-hour rule: don't let foods sit at room temperature for more than two hours. For refrigerated items like deviled eggs, consider putting a few out at a time and replenishing when needed.
- Place hot foods in crockpots, chaffing dishes, or on warming plates to maintain a safe temperature.
- Cover food containers in the buffet line when not in use.
- Use large spoons, forks, wax paper, tongs and other serving tools to avoid touching food by hand.
- If you suspect anything has been out too long, toss it.