US DEPARTMENT OF LABOR PROPOSES NEW RULE ON JOINT EMPLOYER STATUS

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US Labor, Employment, and Workplace Safety Alert

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On 22 April 2026, the US Department of Labor's (DOL) Wage and Hour Division announced aproposed rule (Proposed Rule) addressing joint employer status under the Fair Labor Standards Act of 1938 (FLSA), the Family and Medical Leave Act of 1993, and the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (collectively, the Applicable Statutes). The DOL's Proposed Rule is intended to establish a single nationwide standard for determining when multiple entities may be jointly responsible for wages, damages, and other statutory obligations to employees under the Applicable Statutes.

This Proposed Rule is significant for businesses that operate through franchise systems, staffing agencies, contractor relationships, and other business models involving shared oversight or control of workers because these work arrangements often involve the highest risk of being classified as joint employers who share the legal obligations owed to workers.

RELEVANT BACKGROUND

The Proposed Rule follows the rescission of President Donald Trump administration's 2020 joint employer rule (2020 Rule) by the US District Court for the Southern District of New York. Following recission, and in the absence of a final rule, businesses encountered various tests for joint employer status that varied greatly across jurisdictions. Thus, the Proposed Rule serves as the DOL's first attempt to establish a workable joint employer framework since July 2021. As background, the 2020 Rule required *actual control* over another entity's workers before joint employer liability would attach under the FLSA, a business friendly approach that made it more difficult to establish joint employer liability. The Proposed Rule would return to an “economic realities” framework that considers both direct and indirect control, with a hiring entity's right to control serving as a relevant factor for determining joint employer status.

THE PROPOSED RULE

In its press release, the DOL stated that the Proposed Rule is designed to address what it describes as a “dearth of departmental regulatory guidance” and to create greater consistency by drawing from commonalities in federal court precedent across the Applicable Statutes. The DOL's stated goal is to provide a clear standard to simplify compliance for American businesses and make their investigations more efficient, particularly in light of the DOL's rescission of the 2020 Rule.

Importantly, the Proposed Rule distinguishes between “vertical joint employment” and “horizontal joint employment.” Vertical joint employment occurs “where an employee is employed by an employer for work, and

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another person—or entity—simultaneously benefits from that work as, or in the manner of, an employer," whereas horizontal joint employment occurs when an individual works for two or more separate but associated employers who are sufficiently associated with each other with respect to the employment of the employee.

Vertical Joint Employment: Four-Factor Test

The Proposed Rule proposed a four-factor test to determine the existence of a vertical joint employment relationship focused on the economic reality of a potential joint employer's control over the employee, whether direct or indirect.

The factors include 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.

None of the four factors outlined in the Proposed Rule are intended to be dispositive. While the Proposed Rule highlights additional factors that may be considered, including a worker's continued and related relationship with a potential joint employer or a worker's economic dependence on a potential joint employer, such factors are generally less relevant to the primary four factors set forth above. Further, while the potential joint employer's ability to exert control over workers is taken into consideration, the Proposed Rule notes that the actual exercise of control is more relevant for the analysis. Finally, the Proposed Rule identified certain factors that are irrelevant to the determination and are more generally associated with the determination of a worker as an independent contractor,[1] including whether: (i) the worker's role requires special skill, initiative, judgment, or foresight; (ii) the worker has an opportunity for profit or loss; and (iii) the worker invests in equipment or materials necessary for their role.

Horizontal Joint Employment: "Sufficiently Associated"

The Proposed Rule largely retains the analysis from pre-2020 regulations for horizontal joint employment, which focuses on the relationship between employers based on all the facts and circumstances to determine if the "employers are sufficiently associated with respect to the employment of the employee." Under the Proposed Rule, two employers would be considered "sufficiently associated" if:

- There is an arrangement between them to share a worker's services;
- One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or
- They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The Proposed Rule provides that "certain business relationships" such as engaging with the same vendor or being a franchisee of the same franchisor are inadequate on their own to establish two entities as "sufficiently

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associated.” However, where there is horizontal joint employment, employees' total hours worked in a week for each employer must be aggregated, and each employer would be “jointly and severally liable” for wages due under the Applicable Statutes.

General Joint Employer Considerations

Importantly, the Proposed Rule provides that common business arrangements, such as requirements to comply with general legal obligations or health and safety regulations, or even providing a sample handbook, would not establish joint employer status alone. The DOL indicated that contractual obligations between two entities, including those related to quality control standards, deadlines, or deliverables do not make joint employer status more or less likely. However, if a potential joint employer were to exercise control over workers with regard to certain standards or policies, those actions could indicate joint employer status. Under the Proposed Rule, joint employer status turns on “the circumstances of the whole activity” with a focus on factors that are pertinent to the wages and working conditions of the relevant workers.

COMMENT PERIOD

Pursuant to the DOL's required rule-making processes, the Proposed Rule is subject to a 60-day comment period, which closes on 22 June 2026.

Businesses may wish to use this comment period to review existing contractual relationships and compliance practices, particularly where more than one entity has authority over hiring, scheduling, pay practices, workplace conditions, or employment records for its workers. They may also wish to consider whether to submit comments addressing the proposal's operational, compliance, and litigation implications.

POTENTIAL IMPACT ON BUSINESSES

If adopted, the Proposed Rule would affect a broad range of business arrangements where more than one entity is involved in workers' terms and conditions of employment. Among many others, the Proposed Rule is most likely to have a significant impact on the following business relationships:

- Franchise relationships;
- Staffing agency arrangements;
- Subcontracting structures;
- Outsourcing models; and
- Other partnership or business arrangements involving shared authority over hiring, scheduling, compensation, or employment records.

The DOL's Proposed Rule represents a potentially important development in the federal joint employer doctrine as it applies to the Applicable Statutes. Companies with business models involving shared control over workers should consider evaluating their arrangements in light of the proposed framework and the approaching public comment deadline. However, businesses should be mindful that the Proposed Rule would only apply with respect to the Applicable Statutes, with a different framework applying under other federal laws, including the recently

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finalized National Labor Relations Board rule addressing joint employer liability under the National Labor Relations Act, as well as under applicable state laws. Companies need to refresh themselves on those requirements and how the Proposed Rule may differ.

CONSULT EMPLOYMENT COUNSEL

The lawyers of our Labor, Employment, and Workplace Safety practice regularly counsel clients on a wide variety of issues related to joint employer status and are well positioned to provide guidance and assistance to clients on this potentially significant development. We will continue to monitor developments as additional information becomes available.

FOOTNOTES

[1] See K&L Gates Legal Alert, *DOL Publishes Proposed Rule to Rescind the 2024 Biden-Era Independent Contractor Test* (March 6, 2026), https://www.klgates.com/DOL-Publishes-Proposed-Rule-to-Rescind-the-2024-Biden-Era-Independent-Contractor-Test-3-6-2026.

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