

Legislative Update FEBRUARY 2020*

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FEDERAL DEPARTMENT OF LABOR ISSUES JOINT EMPLOYER FINAL RULE

On January 12, 2020, the United States Department of Labor (DOL) announced a final rule narrowing the definition of "joint employer" under the Fair Labor Standards Act (FLSA). The final rule, which provides clarity to businesses about franchise and contractor relationships, takes effect on March 16, 2020. In the DOL's first significant update to the joint-employer rule in more than 60 years, a four-factor balancing test was created to determine whether businesses share liability for federal FLSA wage and hour violations. Under this rule, the DOL will consider whether a business:

- (1) Hires and fires employees;
- (2) Supervises and controls employees' work schedules or conditions of employment to a substantial degree;
- (3) Determines employees' pay rates and methods of payment; and
- (4) Maintains employment records.

Reserving the right to control employees' working conditions is not enough to show that a business is a joint employer; the company must actually exert that control. This rule is helpful to businesses which stay out of the day-to-day employment decisions of their contractors and franchisees.

In addition to the four-factor balancing test, the final rule clarifies that an employee's "economic dependence" on a company does not determine whether that company is a joint employer under the FLSA. The DOL also provided several examples of how to apply the new rule in various scenarios. The rule clarifies that the following factors do not influence the joint-employer analysis:

- Having a franchisor business model.
- Providing a sample employee handbook to a franchisee.
- Allowing an employer to operate a facility on the company's grounds.
- Jointly participating with an employer in an apprenticeship program.
- Offering an association health or retirement plan to an employer, or participating in a plan with the employer.
- Requiring a business partner to establish minimum wages and/or to establish policies including but not limited to workplace safety and sexual harassment prevention.

Source: DOL, SHRM

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