



NLRB FACT SHEET

Proposed Rule Regarding the Standard for Determining Joint-Employer Status

OVERVIEW

The National Labor Relations Board's (NLRB) proposed rule would change the standard for determining whether one employer can be found to be a joint employer of another employer's employees.

AT-A-GLANCE

- The proposed rule reflects a return to the previously longstanding standard that an employer may be considered a joint employer of another employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction.
- The intent of the proposed rule is to foster predictability and consistency regarding determinations of joint-employer status in a variety of business relationships, thereby promoting labor-management stability.
- Since 2015, there has been instability in the law regarding whether a company shares or codetermines the essential terms and conditions of another employer's employees when it indirectly influences those terms and conditions, has never invoked a contractual reservation of authority to set them, or has exercised authority that is merely "limited and routine," such as by instructing employees where and when to perform work, but not how to perform it.
- The change to current law that would be effectuated by the proposed rule, should it become final after notice and comment, would be that a company could no longer be deemed to be a joint employer of another employer's workers based solely on its indirect influence, a contractual reservation of authority that the company has never exercised, or its exercise of only "limited and routine" authority.
- Under the National Labor Relations Act, the legal consequences of a joint-employer finding are significant. The Board may compel a joint employer to bargain over the terms and conditions of employees employed by another employer. Also, each company comprising the joint employer may be found jointly and severally liable for the other's unfair labor practices. And a finding of joint-employer status may determine whether picketing directed at a particular business is primary and lawful, or secondary and unlawful.
- The proposed rule reflects the Board's initial view, subject to potential revision in response to comments, that the Act's purposes would not be furthered by drawing into a collective-bargaining relationship, or exposing to joint-and-several liability, the business partner of an employer where the business partner does not actively participate in decisions setting the employees' wages, benefits, and other essential terms and conditions of employment.

ADDITIONAL INFORMATION

The Board seeks public comment on all aspects of its proposed rule. As specified in the Notice of Proposed Rulemaking, published in the Federal Register on September 14, 2018, public comments may be submitted electronically or in hard copy.

The proposed rule may be found at:

<https://www.federalregister.gov/documents/2018/09/14/2018-19930/definition-of-joint-employer>

The Board will review the public comments and work to promulgate a final rule that clarifies the joint-employer standard in a way that promotes meaningful collective bargaining and advances the purposes of the Act.