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LEGISLATIVE ACTION ALERT

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Biden's veto allowed the joint-employer rule to stand

>>>>>>>This article supplied by our legal advisor Tom Kohn, Esq.<<<<<<<<

NLRB'S NEW JOINT EMPLOYER STANDARD WITHSTANDS EFFORT TO OVERRIDE PRESIDENT BIDEN'S VETO OF CONGRESSIONAL ATTEMPT TO NULLIFY BOARDS' RULE

On October 26, 2023, the NLRB issued a final rule that altered the standard used for determining joint-employer status, thereby making it much easier to prove the existence of that relationship. In response, the U.S. House of Representatives passed legislation that would have blocked the new rule; however, President Biden vetoed that legislation. On May 7, 2024, the House of Representatives voted 214-191 to override that veto, but because it takes a two-thirds vote to do so, the override measure failed and the Board's standard will go into effect, subject to what are certain to be significant court challenges by employer groups.

Under the new standard, an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine one or more of the employees' essential terms and conditions of employment, which are defined exclusively as: (1) wages, benefits, and other compensation; (2) hours of work and scheduling; (3) the assignment of duties to be performed; (4) the supervision of the performance of duties; (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline; (6) the tenure of employment, including hiring and discharge; and (7) working conditions related to the safety and health of employees.

While the new standard is expected to have major application to franchise operations, it may come into play in a variety of other third-party employment scenarios. Once a joint-employer status is determined to exist where the union represents the employees of the primary employer, the third-party employer would be required to bargain with respect to matters over which it has control.



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