



# Pennsylvania Conference of Teamsters

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## LEGISLATIVE ACTION ALERT

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### NLRB WITHDRAWS O'BAMA BOARD'S STANDARD FOR JOINT EMPLOYER STATUS

In what is the first of many anticipated changes that the newly-constituted NLRB will be making, the Board withdrew a 2023 Rule governing the standard for determining joint employer status and reinstated a prior Rule governing that issue. The reinstated Rule states, “an employer...may be considered a joint employer of a separate employer’s employees only if the two employers share or codetermine the employees’ essential terms and conditions of employment.” In order to establish those conditions, “the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees.” The Rule thus requires “direct and immediate control” over what the Board has determined to be the following “essential terms and conditions of employment”: wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction, the last of which involves assigning particular employees work schedules, positions and tasks.

For the most part, the joint employment status has been applied within the franchise industry, such as holding (or attempting to hold) the McDonalds corporate entity to be a joint employer of a franchise’s employees. While the Board’s now-current standards make it much more difficult to tie the different levels of a company, or even unrelated employers, together as joint employers, if the evidence establishes “direct and immediate control that has a regular or continuous consequential effect on an essential term or condition of employment of another’s employees,” it may still be possible to find a joint employment relationship.

It should be noted that there is also an ongoing effort in Congress to address this issue, with the Republicans leading that effort.



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