

Pennsylvania Conference of Teamsters

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LEGISLATIVE ACTION ALERT

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NLRB PUBLISHES FINAL RULE REGARDING JOINT-EMPLOYER STATUS

After a prolonged delay, the NLRB has issued its Final Rule addressing the Standard for Determining Joint-Employer Status under the National Labor Relations Act.

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.

In adopting this new standard, the final rule rescinds the 2020 final rule that was promulgated by the prior Board. The new final rule more faithfully grounds the joint-employer standard in established common-law agency principles. In particular, the 2023 rule considers the alleged joint employers' authority to control essential terms and conditions of employment, whether or not such control is exercised, and without regard to whether any such exercise of control is direct or indirect. By contrast, the 2020 rule made it easier for actual joint employers to avoid a finding of joint-employer status because it set a higher threshold that a putative joint employer must "possess and exercise . . . substantial direct and immediate control" over essential terms and conditions of employment, which has no foundation in common law. The new rule also provides extensive guidance to parties regarding their rights and responsibilities in situations where joint-employer status has been established.

While this new rule will make it easier to bring true joint employers to the bargaining table and thus deal with many thirdparty issues that often occur, such as the ostensible joint employer refusing to allow a particular individual on its property, the last word will lie with the courts, as this rule will certainly be challenged by any employer deemed to be a joint-employer.



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