



LABOR & EMPLOYMENT PRACTICE GROUP

Meltzer Lippe is home to a large, experienced Labor and Employment Law Practice Group.

We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.

Exclusively representing management, our attorneys are indispensable advisors to senior executives and the HR team. While some business owners and companies rely on our experience and depth to supplement in-house general counsel expertise, others lean on us to resolve their labor disruptions or employ our tenacity in collective bargaining.

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New National Labor Relations Board Joint Employer Rule Overturned by Texas District Court

On March 8, 2024, Texas District Court Judge J. Campbell Barker ruled the National Labor Relations Board's ("Board") new Joint Employer Rule was unlawful for the following reasons: (i) it is inconsistent with common law; (ii) it is arbitrary and capricious for ignoring serious practical problems; and (iii) it fails to articulate a comprehensible standard with meaningful guidance to the regulated parties. In sum, this decision applies nationwide and confirms the 2020 version of the joint employment standards remains in effect. Under the Board's new rule, employers faced a new risk they would be deemed a joint employer.

More specifically, on October 27, 2023, the National Labor Relations Board ("Board") published a final rule addressing the standard for determining Joint-Employment Status. The proposed standard provided that two or more entities may be considered joint employers if each entity has an employment relationship with the employee(s), and if the entities share or codetermine one or more of the employees' essential terms and conditions of employment. This rule replaced the standard from 2020 with lower threshold and made it more burdensome and difficult for an employer to demonstrate joint employment does not exist. The new rule appears to target franchise arrangements and most staffing agencies.

The 2020 joint employer standard, which currently remains in effect, provides that an employer will be considered a joint employer of another company's employees only if the business possesses and exercises "substantial direct and immediate control over one or more essential terms and conditions of employment of another company's employees." More specifically, under this standard an employer is considered a "joint employer" if said employer "share(s) or co-determine(s) the employee's essential terms and conditions of employment, including wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction." Even where an employer exercises direct control over another employer's workers, it will not be held to be a joint employer if such control is "limited and routine."

Meltzer Lippe is well versed in legislative developments related to Board rules. Employers with questions relative to the foregoing are encouraged to reach out to your Meltzer Lippe advisor or contact Justin A. Schwamb at Meltzer, Lippe, Goldstein & Breitstone, LLP.