

LEGAL UPDATE



NLRB Voluntarily Withdraws Joint-employer Rule Appeal

On July 19, 2024, the National Labor Relations Board (NLRB) voluntarily dismissed its appeal of the U.S. District Court for the Eastern District of Texas decision vacating the NLRB's [2023 joint-employer rule](#). As a result, the decision of the Eastern District of Texas will be final.

The rule, which had been set to take effect on March 11, 2024, would have expanded the types of control over job terms and conditions that trigger joint employment. The NLRB stated it would like to consider the issues identified in the Eastern District of Texas' decision and options for addressing outstanding joint employer matters. As a result of the Eastern District of Texas' ruling and the NLRB's decision to withdraw its appeal, the former President Donald Trump-era [2020 joint-employer rule](#) remains in effect and calls into question the future status of the 2023 rule.

Background on the 2023 New Joint-employer Standard

Joint-employment situations can happen when two or more employers share personnel hiring, supervision and management practices. When a joint-employment status exists, joint employers are equally responsible for compliance with applicable laws and regulations. The 2023 joint-employer standard sought new criteria for determining joint-employer status as applied to labor issues under the National Labor Relations Act. It would have rescinded the existing 2020 joint-employer standard and replaced it with a more inclusive law, making it easier for employers to be classified as joint employers.

The 2023 rule created a more inclusive standard for determining joint-employer status by removing the requirement that joint employer must "possess and exercise ... substantial direct and immediate control" over essential terms and conditions of employment. Specifically, the rule considered the alleged joint employers' authority to control essential terms and conditions of employment, regardless of whether such control was exercised.

2020 Joint-employer Standard

The 2020 standard considers the "substantial direct and immediate control" employers have over essential terms and conditions of employment for individuals who are employed by another organization. Specifically, the 2020 joint-employer standard indicates that a business is a joint employer of another employer's employees only if the degree of joint control is of sufficient magnitude to conclude that the joint employer meaningfully affects matters relating to the employment relationship.

Impact on Employers

Considering the Eastern District of Texas' ruling and the NLRB's decision to withdraw its appeal, employers should ensure they rely on the 2020 joint-employer standard to determine where joint employment exists.

HIGHLIGHTS

- On **March 8, 2024**, a federal judge blocked the implementation of the NLRB's 2023 joint-employer standard, which was set to take effect on **March 11, 2024**.
- On **May 7, 2024**, the NLRB appealed the federal judge's decision to the U.S. Court of Appeals for the 5th Circuit.
- On **July 19, 2024**, the NLRB voluntarily dismissed its appeal.
- The 2020 joint-employer rule remains in effect.
- Employers should rely on the 2020 joint-employer rule to determine where joint employment exists.

Employers should continue to monitor the NLRB's actions related to the joint-employer standard, as the board indicated that it would consider its options for addressing outstanding joint-employer matters after voluntarily dismissing its appeal to the U.S. Court of Appeals for the 5th Circuit.

