CLIENT ALERTS & INSIGHTS

National Labor Relations Board Releases Language of Proposed Rule to Reverse Obama-Era Joint-Employer Standard

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The National Labor Relations Board ("NLRB") released today a draft rule that would reverse the Obama Board's 2015 *Browning-Ferris Industries* joint-employer decision, which greatly expanded the NLRB's test for determining whether business constitute joint-employer.

The proposed rule, set for publication in the Federal Register tomorrow, would only find a business qualifies as a joint-employer of another business's workers if it "possesses and exercises substantial, direct and immediate control over the essential terms and conditions of employment and has done so in a manner that is not limited and routine. Indirect influence and contractual reservations of authority" will no longer establish a joint-employer relationship.

This rule represents a complete reversal of the *Browning-Ferris Industries* standard that stated companies were joint-employers if they had only "indirect" control over workers, whether or not that control was ever exercised.

The NLRB's decision to pursue administrative rulemaking in this area is designed to "foster predictability, consistency, and stability" regarding joint-employer status after three years of uncertainty. The decision to begin the administrative rulemaking process and seek public comment on the draft reconfirms the Board's commitment to address joint-employer liability through such rulemaking, as Chairman Ring previously stated in May. (see reference to joint-employer developments in July 18, 2018 bulletin). Ring was joined by Members Marvin Kaplan and William Emanuel in the proposal, while Member Lauren McFerran dissented.

With the publication to the Federal Register, the public can now comment and provide feedback on the proposed rule. The comment period will be open for 60 days from publication in the Federal Register. The NLRB then will have the opportunity to review and respond to those comments when promulgating a final rule.

For more information on this topic, contact a member of Benesch Labor & Employment Practice Group.

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