

Federal Court Vacates DOL's Joint Employer Rule Issued in 2023

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In *Chamber of Commerce of United States v. NLRB*, No. 23-cv-00553, 2024 U.S. Dist. LEXIS 43016 (E.D. Tex. Mar. 8, 2024), the United States District Court for the Eastern District of Texas vacated the National Labor Relations Board's (NLRB) 2023 joint employer rule (the 2023 Rule) and preserved the NLRB's 2020 joint employer rule (the 2020 Rule). This ruling represented a win for employers, as the 2023 Rule set forth a far more expansive interpretation of what entities constitute "joint employers" under the National Labor Relations Act (NLRA) than the 2020 Rule.

In short, under the 2020 Rule, for an entity to be considered a joint employer over certain employees, 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 2020 Rule is clear that control is not "substantial" for purposes of establishing joint employment "if only exercised on a sporadic, isolated, or de minimis basis." Thus, while indirect or reserved but unused control may be relevant under the 2020 Rule, it is not sufficient to establish joint employment.

On the other hand, under the 2023 Rule, "two or more employers of the same particular employees are joint employers of those employees if the employers share or codetermine those matters governing employees' essential terms and conditions of employment." Under the new rule, "the authority to control one or more essential terms and conditions of

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employment is sufficient to establish status as a joint employer, *regardless of whether control is exercised.*" Similarly, "[e]xercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, *regardless of whether the power is exercised directly.*" As such, the 2023 Rule raised questions about whether businesses would be liable for the decisions of subcontractors, franchisees, and other entities over whom they had little if any actual control.

Due in part to these concerns, a group of industry associations filed a lawsuit in federal court against the NLRB challenging the 2023 Rule on the grounds that it was inconsistent with common law, and arbitrary and capricious. The court ultimately agreed with the associations and vacated the 2023 Rule, finding that the NLRB's action in rescinding the 2020 Rule neither reasonable nor reasonably explained. While the NLRB is expected to appeal the court's decision, for now businesses can continue to rely on the 2020 Rule, which limits joint liability for labor violations and obligations under the NLRA.