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November 30, 2022

November Tip of the Month: NLRB Proposes New “Joint Employer” Legal Standard

The National Labor Relations Board (NLRB) recently released a Notice of Proposed Rulemaking (Proposed Rule) which, if adopted, would establish a new "joint employer" legal standard under the National Labor Relations Act (NLRA). Under the current NLRA standard, an entity can only be deemed a joint employer if it *actually exercises* "substantial direct and immediate control" over certain employment terms and conditions of another employer's employee. On the other hand, the Proposed Rule would consider an entity's *potential, but unexercised and indirect* control over an inexhaustive list of employment terms and conditions in determining joint employer status. Simply put, the Proposed Rule would make it easier for an entity to be deemed a joint employer. The NLRA's joint employer standard can have implications for unionized and nonunionized employers alike. Employers should closely examine their relationships and dealings with other companies' employees and, among other measures, consider memorializing the details and limits of those relationships.

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