



# IRI ALERT

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## IRI Alert on NLRB Joint Employer Rule

The new [NLRB joint employer rule](#), which takes effect on December 26, 2023, significantly expands the definition of joint employer status under the National Labor Relations Act (NLRA). Under the new rule, two or more employers are considered joint employers of a group of employees if they share or codetermine the essential terms and conditions of those employees' employment.

### POTENTIAL IMPLICATIONS FOR EMPLOYERS

Employers that are considered joint employers may be:

- Required to bargain with a union representing jointly employed workers
- Subject to joint and several liability for unfair labor practices committed by the other employer
- Subject to labor picketing that would otherwise be unlawful

When determining joint employer status under the new rule, the NLRB will consider evidence of both direct and indirect or reserved control over essential terms and conditions of employment. Direct control may include things like setting wages, hiring and firing employees, and supervising employees' work. Indirect or reserved control may include things like having the right to control essential terms and conditions of employment, even if that right is not exercised, or having a contractual relationship with another employer that gives the employer control over essential terms and conditions of employment.

The essential terms and conditions of employment are defined in the new rule as:

- Wages, benefits, and other compensation
- Hours of work and scheduling
- The assignment of duties to be performed
- The supervision of the performance of duties
- Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline
- The tenure of employment, including hiring and discharge
- Working conditions related to the safety and health of employees

## EXAMPLES OF HOW THE NEW JOINT EMPLOYER RULE COULD IMPACT EMPLOYERS

- A healthcare employer that uses a staffing agency to provides workers could be considered a joint employer of the workers if the healthcare employer has the right to control the workers' schedule and assignment of duties and also supervises the workers.
- A restaurant franchisor could be considered a joint employer of its franchisees' employees if the franchisor sets wages, hiring and firing standards, or safety standards of franchisees' employees.
- A company that contracts with another company to provide transportation and warehousing services could be considered a joint employer of the contracted company's employees if the company exercises control over the essential terms and conditions of employment of those employees.

## WHAT EMPLOYERS SHOULD DO NOW

Employers should carefully review the new joint employer rule to understand the potential implications for their business and consider taking the following steps:

- Identify all entities that may be considered joint employers of your employees. This may include franchisors, contractors, and staffing agencies.
- Review your contracts with these entities to determine whether they give you control over essential terms and conditions of employment. If so, you may be considered a joint employer.
- Assess your level of control over your employees' essential terms and conditions of employment. If you share or codetermine control over these terms and conditions with another entity, you may be considered a joint employer.

- Develop policies and procedures to ensure that you are in compliance with the new joint employer rule. This may include developing policies and procedures for hiring, firing, disciplining, and supervising employees.
- Ensure your overall labor relations strategy extends to cover potential joint employees, including topics such as:
  - Leadership training on the topic of labor relations
  - Vulnerability assessment and detection of early organizing activity
  - Communications processes in the event you need to communicate with joint employees
  - Your ability to quickly and accurately create employee lists that include joint employees
  - Policy review and enforcement

It is important to note that the new joint employer rule will be applied prospectively in cases filed after the effective date of December 26, 2023. However, employers should take steps now to understand the rule and its impact on their business operations and workforce.

*To discuss what steps your organization should be taking today in light of the new Joint Employer Rule, reach out to your IRI consultant or Jay Kuhns at [jkuhns@iriconsultants.com](mailto:jkuhns@iriconsultants.com).*

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