New Joint Employer Rule Issued By Department of Labor

Client Advisories

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The U.S. Department of Labor (DOL) has recently issued a new rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA). Under the FLSA, one company may be found to be a joint employer of a worker even though it is a separate company from the actual employer. This is significant because as a joint employer, that company can be jointly and severally liable for any wage and hour violations, such as a failure to pay minimum wage or overtime.

The new DOL rule establishes a four factor balancing test to determine whether a separate company can be considered a joint employer. The test focuses on the level of control at issue. Specifically, it asks whether the potential joint employer is directly or indirectly controlling the employee based on whether the company:

(1) hires or fires the employee;

(2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree;

(3) determines the employee's rate and method of payment; and

(4) maintains the employee's employment records.

No one factor is controlling and the weight of each factor will depend on the circumstances of each case.

Significantly, the new DOL rule states that to be a joint employer, the company at issue must in fact exercise significant control over the employee. Merely having the ability to exercise such control but not actually doing so is insufficient.

The new rule also identifies factors that are not relevant to the determination of joint employer status under the FLSA. For example, whether or not the employee is economically dependent on the potential joint employer (a factor usually relevant in independent contractor vs employee status determinations) is not relevant for joint employer status. Also of significance is that the rule provides that merely utilizing a franchise or similar business model does not make that business more likely to be a joint employer.

The new DOL rule is a more business friendly rule in the world of joint employer law. However, employers should keep in mind that states have their own wage and hour laws and have developed their own interpretations or rules on joint employer status that employers must consider. To make matters more confusing, several laws, such as the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, have their own joint employer rules. Employers should therefore consult with their counsel for guidance in this area.

For more information, or if you have any questions regarding this alert, you may contact Archer attorney Douglas Diaz, Esquire at ddiaz@archerlaw.com or one of Archer's other experienced Labor and Employment Law attorneys at (856) 795-2121.

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