Proposed DOL Rule Clarifies Joint Employer Liability Under FLSA, FMLA and MWPA

The U.S. Department of Labor (DOL) recently proposed a rule clarifying when multiple employers may be jointly liable under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MWPA). The rule provides a clear, workable framework for determining joint employer status.

The DOL last issued guidance on this topic nearly five years ago, and the proposed rule is a welcome update for employers struggling to comply with conflicting joint employer standards applied by federal appellate courts.

According to the DOL, the proposed rule simplifies compliance for employers while strengthening worker protections. The DOL believes the regulation will promote better business practices, provide certainty and reduce litigation.

Background and Regulatory Context

If finalized, this would be the DOL's first joint-employer guidance since the Biden Administration rescinded the prior joint-employer rule issued during the first Trump Administration. A New York federal court had largely invalidated that earlier rule, and DOL officials say the court's decision informed the current proposal. Unlike the rescinded rule, which covered only the FLSA, this proposal extends to the FMLA and MWPA.

Key Provisions of the Proposed Rule

The proposed rule distinguishes between two categories of joint employment: "vertical" and "horizontal."

- **Vertical Joint Employment** arises when a worker has a direct employment relationship with one employer but is economically dependent on, or controlled by, another entity. The proposed rule outlines a four-factor analysis, considering whether the potential joint employer (1) has the power to hire or fire employees; (2) substantially supervises and controls employees' schedules or working conditions; (3) determines the rate and method of pay; and (4) maintains employment records. If all four factors point in one direction, there is a "substantial likelihood" that joint employment does or does not exist. Otherwise, additional factors may also be considered in addition to weighing these four factors.
- **Horizontal Joint Employment** exists when separate employers are sufficiently related regarding a specific employee. The proposed rule clarifies that horizontal joint employment does not exist merely because employers share a vendor or are franchisees of the same franchisor—relationships that have little connection to specific employees would not trigger joint employer status.

Key Takeaways

- **Broader Statutory Coverage:** Unlike the prior DOL joint employer rule, this proposal covers not only the FLSA but also the FMLA and MWPA, significantly expanding the regulatory framework.
- **Four-Factor Test for Vertical Joint Employment:** The proposed rule establishes a four-factor analysis focusing on hiring and firing authority, supervision and control, pay determinations and employment records.
- **Safe Harbor for Common Business Relationships:** Sharing a vendor or being franchisees of the same franchisor does not, by itself, create horizontal joint employment.

- **Joint and Several Liability:** For each workweek in which an entity qualifies as a joint employer, it is jointly and severally liable with any other joint employers for compliance with all applicable FLSA provisions, including the overtime pay requirements, for all hours worked by the employee in that workweek. In discharging this joint obligation in a particular workweek, each joint employer may take credit toward minimum wage and overtime pay requirements for all payments made to the employee by any other joint employer. Businesses may also be jointly responsible for FMLA compliance.

The comment period closes June 22, 2026. Employers, industry groups and other stakeholders are encouraged to submit comments.

Practical Guidance for Employers

Employers who rely on staffing agencies, shared services arrangements among corporate affiliates, franchise relationships, subcontractors, or other third-party worker arrangements should review the proposed rule's four-factor test and assess their current relationships against this framework. Proactive steps—such as auditing hiring, supervision, pay and recordkeeping practices—may help reduce joint employer exposure if the rule is finalized.

FOR MORE INFORMATION

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