

DOL Proposes Nationwide Joint-Employer Rule Under Federal Wage and Hour Laws; Second Major Joint-Employer Development in 2026 Following NLRB's Reinstatement of 2020 Standard, by Michael A. Kaufman, Esq., 4-27-2026

On April 22, 2026, the U.S. Department of Labor's Wage and Hour Division (WHD) announced a proposed rule that would establish a single, nationwide joint-employer standard under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The proposal marks the second significant federal joint-employer development this year, coming roughly two months after the National Labor Relations Board (NLRB) formally reinstated its 2020 joint-employer standard under the National Labor Relations Act (NLRA).

For employers, the proposal is welcome news, as joint-employer findings can trigger joint and several liability for wages, overtime, damages, and other relief owed under the FLSA and related statutes. Compared with the current landscape, in which the Department has lacked FLSA joint-employer regulatory guidance and courts have applied varying standards, the proposed rule would provide a more predictable, control-focused framework. That clarity is especially significant for industries such as construction, hospitality, and security services, where subcontracting, staffing, franchise, and other layered business arrangements are common and can create exposure for businesses that do not directly employ the workers at issue. Taken together with the NLRB's action, these developments signal a broader shift toward narrower joint-employer standards in 2026, with significant implications for franchisors, staffing users, subcontractors, and businesses operating in multi-employer arrangements.

What the DOL Proposed

According to the WHD's announcement, the proposal (subject to a 60-day public comment period ending June 22, 2026) would:

- Create a single nationwide standard for joint-employer status under the FLSA, FMLA, and MSPA.
- Derive the standard from commonalities in federal circuit court precedent, while addressing existing circuit splits.
- Restore regulatory guidance that the WHD describes as currently lacking, providing a more consistent framework for determining joint-employer status.
- Align the FLSA analysis with FMLA and MSPA standards to promote uniformity in enforcement.

Key Aspects of the Proposed Rule

The Notice of Proposed Rulemaking would restore joint-employer guidance to 29 C.F.R. Part 791 (where it resided before 2021) and adopt a control-based framework similar to the 2020 rule. Among its provisions:

- Two scenarios of joint employment. The proposed rule distinguishes between "vertical" joint employment (where an employee is jointly employed by two or more employers that simultaneously benefit from the employee's work, such as a staffing agency and host business) and "horizontal" joint employment (where an employee works separate hours for two (or more) employers in the same workweek, and the issue is whether the employers are sufficiently associated with respect to the employment of the employee to be deemed to jointly employ the employee).
- Four-factor vertical test for use in every case of potential vertical joint employment. The analysis focuses on whether the potential joint employer: (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.

- Actual control carries greater weight. The proposed rule provides that "reserved control" may be considered but is generally less indicative of vertical joint employment than exercised control, consistent with the judicial focus on "economic reality" in FLSA employment disputes.
- Economic-dependence factors are excluded. Independent contractor considerations — such as whether the job requires special skill, opportunity for profit or loss, or investment in equipment — are not part of the joint-employer analysis under the proposed rule.
- Neutral treatment of common business practices. The proposed rule provides that certain general business models/practices do not make joint-employer status more or less likely, including certain contractual agreements related to health, safety, or legal compliance, including anti-harassment policies, background checks, and workplace safety protocols.
- Joint and several liability. Where joint employment exists, each joint employer is jointly and severally liable for FLSA compliance (including overtime based on aggregated hours), though each may credit payments made by other joint employers toward minimum wage and overtime obligations.
- Illustrative examples included. The proposal includes practical scenarios to guide application.

Why It Matters: Joint and Several Liability

When a joint-employment relationship exists under the FLSA, each joint employer may be held responsible for wages, damages, and other relief owed to employees, including compensation for all hours worked across all joint employers and any applicable overtime premiums. A narrower, more predictable standard therefore has direct financial implications for companies that use staffing agencies, franchise models, subcontractors, or shared-workforce arrangements.

The Companion Development: NLRB's February 2026 Rule

The DOL proposal arrives on the heels of the NLRB's final rule — effective upon publication in the Federal Register on February 27, 2026 — which formally reinstated the 2020 joint-employer standard under the NLRA and withdrew the 2023 rule that would have expanded joint-employer liability but was vacated by a federal court before taking effect.

Under the reinstated standard, an entity qualifies as a joint employer only if it possesses and exercises substantial direct and immediate control over one or more essential terms and conditions of another employer's employees, including wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.

Control must be actual, specific, and material, with a "regular or continuous consequential effect," not "exercised on a sporadic, isolated, or de minimis basis." Indirect control or contractually reserved but unexercised authority, standing alone, is insufficient. The burden of proof rests on the party asserting joint-employer status.

The Board characterized the February 2026 reinstatement as "ministerial," reflecting that the 2020 rule remained operative following the vacatur of the 2023 rule.

Two Different Tests, Two Different Statutes

Employers should not assume that the DOL and NLRB standards are or will become interchangeable. Compliance with one standard does not ensure compliance with the other. Key distinctions include:

- The NLRB applies a "substantial direct and immediate control" test focused on essential terms and conditions of employment. The DOL proposal, by contrast, would apply a four-factor control-based test for vertical joint employment (hiring/firing, supervision and scheduling, rate and method of pay, and maintenance of employment records), a separate "sufficient association" test for horizontal joint employment, and a list of business practices that are expressly deemed neutral.
- The NLRB rule is final and in effect. The DOL rule is a proposal and is not yet final.

- The NLRB standard governs collective-bargaining obligations, unfair labor practice liability, and representation proceedings. The DOL standard governs joint and several liability for unpaid wages, overtime, and FMLA and MSPA obligations.

Businesses must continue to assess joint-employer exposure under each applicable statute independently.

Ongoing Litigation and Future Risk

Even with these narrower federal standards emerging in parallel, joint-employer policy has shifted repeatedly across administrations over the past decade. The 2020 NLRA standard remains subject to ongoing litigation, including challenges brought by union stakeholders, and the DOL proposal will almost certainly draw substantial comments and potentially court challenges from labor and industry stakeholders before any final rule issues.

Employers should therefore treat the current landscape as more predictable but not settled and remain attentive to further developments.

Compliance Steps Employers Should Consider

The convergence of the DOL proposal and the reinstated NLRB rule provides a natural opportunity for businesses using staffing, franchise, or subcontracting models to reassess their joint-employer posture. Steps to consider include:

- Review third-party and vendor agreements to clearly allocate control over hiring, pay, scheduling, discipline, and termination.
- Audit supervisory practices to avoid directing or controlling another entity's workforce.
- Align contracts, training, and day-to-day operations with clearly defined control boundaries.
- Document which entity controls essential terms and conditions of employment.
- Train HR and operational managers on appropriate interactions with contractors, franchisees, and staffing personnel.
- Review applicable state laws, as some impose broader joint-employer standards than the federal frameworks.

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