

CLIENT ALERT: Federal Court Vacates NLRB's New Joint Employment Rule and Enjoins Its Enforcement Against Employers

On March 8, 2024, the United States District Court for the Eastern District of Texas issued a decision vacating the NLRB's new rule governing the status of a "joint employer" under the National Labor Relations Act (NLRA) and enjoining its enforcement against employers. As of now, the 2020 rule on joint employment will govern.

The new rule, which MBJ detailed [here](#), drastically broadened the standard for who qualifies as a joint employer under the NLRA to include any entity who possessed authority or control over an essential term or condition of an employee's employment. The new rule represented a significant expansion of joint employment under the NLRA, with potentially extreme consequences for employers including involvement in a co-employer's collective bargaining, liability for a co-employer's unfair labor practices, or involvement in strikes or boycotts as a result of the co-employer's labor disputes.

In vacating the final rule, the district court examined whether the final rule was arbitrary or capricious under the Administrative Procedures Act. The court determined that the final rule, as drafted, would "treat virtually every entity that contracts for labor as a joint employer...." The court found that the reach of the new rule exceeded the bounds of the common law with respect to joint employment principles, and was arbitrary and capricious and contrary to established law. The court also maintained that the NLRB's existing rule that went into effect in 2020 – that an employer is considered a joint employer under the NLRA only in situations where it exercises "substantial direct and immediate control" over the essential terms and conditions of another entity's employee – would remain in effect.

Possibilities for next steps include an appeal by the NLRB to the Fifth Circuit or initiation of notice-and-comment rulemaking to rescind the 2020 joint employer rule. Should you have any questions about the joint employer standard or how this decision might impact your employees, please reach out to your MBJ attorney.

Ryan Jaziri and Catherine "Cat" Scott are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or rjaziri@morganbrown.com and cscott@morganbrown.com, respectively. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on March 13, 2024.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may

have.