

Insights: Alerts

Biden DOL Rescinds Business-Friendly Trump-Era Joint Employer Rule

July 30, 2021

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The U.S. Department of Labor ("DOL") announced yesterday that it is revoking the Trump-era joint employer rule for determining when multiple entities or employers are jointly liable for wage and hour law violations. The new rule rescinding the previous administration's rule will go into effect on September 28.

Under the Trump-era rule — which narrowed the circumstances under which multiple employers could be held jointly liable for FLSA violations — companies were only considered to be joint employers if they could hire or fire the employee; supervise and control the employee's work schedules or conditions of employment; determine the employee's rate and method of pay; and maintained the employee's employment records. Prior to the rule's issuance, the DOL in 2017 had withdrawn Obama-era guidance stating that a determination of joint employment required consideration of the "economic realities" of the employment relationship, such as who controlled working conditions, the nature of the work being performed, and whether workers were vital to the company's business.

Against the backdrop of yesterday's announcement, litigation over the prior administration's joint employer rule remains pending. The Trump-era rule was challenged in a lawsuit initiated by the State of New York and other Democrat-led states with the U.S. Chamber of Commerce, International Franchise Association, and other business groups intervening on behalf of the DOL. Last year, a Manhattan federal judge blocked the Trump-era rule from taking effect. That ruling is currently pending appeal before the 2nd Circuit Court of Appeals.

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