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Hold, Please: Texas Judge Blocks Labor Board's Joint-Employer Rule

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In the fall of 2023, the National Labor Relations Board (NLRB) promulgated a rule that would have made it significantly easier for the agency to find the existence of “joint-employment” between two or more entities. The rule was challenged in federal court and the effective date was delayed by the NLRB to February 2024 and then by a judge to March 2024. It now appears the rule will be on hold for longer – if not permanently.

According to a report from Yahoo, "U.S. District Judge J. Campbell Barker in Tyler agreed with the challengers to the ‘joint employers’ rule, including the U.S. Chamber of Commerce, that it is too broad and violates federal labor law. The rule, issued in October, had been set to take effect on Monday [March 11]."

The article said the judge found the rule to be improper because “it would treat some companies as the employers of contract or franchise workers even when they lacked any meaningful control over their working conditions.”

NLRB Chairman Lauren McFerran responded to the ruling with the following statement: “The District Court’s decision to vacate the Board’s rule is a disappointing setback, but is not the last word on our efforts to return our joint-employer standard to the common law principles that have been endorsed by other courts. The Agency is reviewing the decision and actively considering next steps in this case.”

The joint-employment doctrine often is used by federal agencies to impose liability on two or more companies with respect to a group of employees, such as a staffing company and its client or a franchisor and franchisee. For example, the NLRB can use the doctrine to impose liability for violations of the National Labor Relations Act (NLRA) on multiple companies, and the agency has been at the forefront of changes to how joint-employment is evaluated.

A finding of joint employment can have significant consequences for companies under the NLRA. From a practical perspective, each company found to be a joint employer by the NLRB may be held

liable for the unfair labor practices of their co-employers.

That is, companies not only need to account for their own compliance with the NLRA, they must also attempt to ensure compliance by any company with whom they are determined to be a joint employer. Accordingly, companies should note a new standard is in effect now that likely will make it easier for the agency to find joint-employer relationships.

To the extent this court ruling staying the NLRB's new joint-employer rule remains intact – appeals are likely – it may offer some reprieve on the labor law front for companies using contingent labor and/or franchise models. Stay tuned.

> A federal judge in Texas on Friday struck down a U.S. National Labor Relations Board (NLRB) rule that would treat many companies as employers of certain contract and franchise workers and require them to bargain with unions representing them.

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