

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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NLRB Issues Final Rule Expanding Joint Employer Status

On October 27, 2023, the National Labor Relations Board (NLRB) issued a final rule that vastly expands the definition of joint employment under the National Labor Relations Act (NLRA). As we reported previously, this new rule rescinds and replaces the 2020 focus on “direct and immediate control” with a less-demanding standard intended to expressly ground the joint-employer rule in common-law agency principles.

Under this new standard, two or more entities may be designated as joint employers if they share or codetermine one or more of the employees’ essential terms and conditions of employment. In modifying the proposed rule, the Board enumerates an exhaustive list of terms or conditions that are essential for purposes of the joint-employer inquiry. These include: (1) wages, benefits and other compensation; (2) hours of work and scheduling; (3) the assignment of duties to be performed; (4) the supervision of the performance of duties; (5) work rules and directions governing the manner, means and methods of the performance of duties and the grounds for discipline; (6) tenure of employment, including hiring and discharge; and (7) working conditions related to the safety and health of employees. Importantly, an entity’s control or simply the potential to control, whether direct or indirect, over any of these seven categories, is sufficient to establish a joint-employer relationship.

The NLRB’s new final rule becomes effective December 26, 2023, and will apply only to cases filed after the effective date. Because the new rule largely expands the likelihood of a joint-employer designation, it is imperative that employers reassess their current contracts with third parties to evaluate how these relationships may be classified under the new rule. Further, the new rule will impact collective bargaining because it requires that a joint employer “must bargain collectively” over any term and condition of employment that it has the authority to control.

If you have any questions regarding the NLRB’s new rule, please contact [Kali Schreiner](#), any attorney in Bond’s [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

