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How a new rule about joint employers may impact your business

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by Gene Marks, For The Inquirer
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Is your business a joint employer? You may be, and thanks to a [new rule](#) from the National Labor Relations Board your relationship with your employees could be very different than before — and potentially more expensive.

Under the ruling, employees who work for a company that has a joint-employer relationship with another company — particularly a larger one that's not exempt from certain mandates, like having to provide paid sick time, workers compensation insurance, or paid time off — may be entitled to more benefits, compensation, a change of work hours, and the ability to join a union or join collective bargaining efforts with other workers at the joint employer.

“This rule impacts many small businesses,” said [Tracy Armstrong](#), a New Jersey-based employment attorney. “It's not just about the control that you exert, but the control that you may be able to exert.”

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What is a joint employer?

According to the NLRB, your business might be a joint employer if there's another company that shares in the control of some or all of your employees. This includes determining their wages, benefits, and other compensation or the hours they work, who supervises them, or the rules they follow. A joint-employer relationship with another company may also exist if that company has a say over the hiring or termination of your employees or the work conditions in your facility or elsewhere.

“The Board’s new joint-employer standard reflects both a legally correct return to common-law principles and a practical approach to ensuring that the entities effectively exercising control over workers’ critical terms of employment respect their bargaining obligations under the National Labor Relations Act,” said Chair Lauren McFerran in a statement. “While the final rule establishes a uniform joint-employer standard, the Board will still conduct a fact-specific analysis on a case-by-case basis to determine whether two or more employers meet the standard.”

If you own and operate a franchise then there's a good chance you're in a joint-employer relationship with your franchisor. If your franchise business owns other stores that are independent and separately operated locations, you're probably still the joint employer of all the employees.

If you're a subcontractor to another company and that company has some control over the hours and duties of some of your employees then it's possible you have a joint relationship with them. If your IT firm has one of their employees on your site on a regular basis, you could be a joint employer. Or if you use a staffing company for some or all of your workers — even temporary workers performing administrative work — then you may be in a joint-employer relationship.

How the rule may affect both union and non-union employers

[Martin Aron](#), who practices employment law in New Jersey, believes that the new rule will have a “dramatic impact” on all businesses — and unions.

“It will make it much easier for unions to organize and for unfair labor practice charges to be imposed on more businesses that were before considered separate corporate entities,” he said.

Aron also feels that the effects of this rule will go well beyond unions.

“Even if a company doesn't have a concern about being unionized, they still might be subject to providing benefits or being subject to potential worker lawsuits if they're part of a bigger group with more than one employer involved,” he said.

The U.S. Chamber of Commerce also expressed concern over how the rule will be put into practice.

“Many companies could find themselves facing liability for workers they don't employ and workplaces they don't actually control,” the Chamber said [in a statement](#). “Worse yet, if a non-union employer is found to be a joint employer with a unionized company, the non-union company now has to sit at the bargaining table. Even more concerning, it's possible that non-union employers will suddenly find themselves dragged into participation in multi-employer pension plans covering their new unionized “employees.”

How businesses can prepare

What do you do if you find yourselves in a potential joint employer relationship with another company? Know who these employees are, understand the additional costs that could be incurred, and meet with that company — and any other companies — who may be considered joint employers with you.

“Every employer should be listing those contractual relationships and do a deep dive into those relationships to see whether or not there are terms and conditions that might pull you into this type of joint-employer arrangement,” Aron said.

Armstrong agrees. “You’re going to need to have a sit-down with those companies and document who has control over the employees used in your relationship,” she said. “Maybe you want to relinquish or increase that control. More likely than not you are going to control something that will make you a joint employer.”

Gene Marks, For The Inquirer

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