



DOL Proposes New Joint Employer Rule: What Employers Need to Know

As we discussed in our last AM Alert, “Joint Employer Claims Are No Longer the Exception — They’re the Norm,” joint employer disputes have surged in the wake of regulatory shifts and post-COVID workforce changes, with courts increasingly looking past contractual labels to examine the reality of control over workers. That trend now has a significant new development: on April 23, 2026, the U.S. Department of Labor published a proposed rule establishing a uniform test for joint employer status under the FLSA, FMLA, and Migrant and Seasonal Agricultural Worker Protection Act. The rule addresses “vertical” joint employment, where a worker employed by one entity is controlled by another, and “horizontal” joint employment, where related employers jointly control work.

For vertical joint employment, the proposal centers on four factors: whether the potential joint employer (1) hires or fires the employee, (2) substantially supervises the employee's schedule or conditions, (3) determines pay rate and method, and (4) maintains employment records. Unlike its 2020 predecessor, the rule allows consideration of additional factors, including economic dependence, though the four core factors carry greater weight. Notably, operating as a franchise does not, by itself, make joint employer status more or less likely. The comment period closes June 22, 2026.

A word of caution, though: do not mistake a national rule for a national solution. Courts retain ultimate authority to determine who is or is not a joint employer, and whether any court will defer to the proposed rule, particularly in the face of binding circuit-level precedent, is far from certain. Those circuit-level tests have also proliferated into the analyses of many state-level statutes, which will be wholly unaffected by this proposed rule.

The rule does guarantee one thing: DOL enforcement personnel will apply a uniform standard nationwide. But in litigation, your exposure will still depend on which courthouse you are standing in, and what test that court has adopted. The practical reality we described in our last article has not changed. What matters most is not what the contract says, but what the company actually does.

What Should Businesses Do Now?

Employers should review existing staffing, subcontracting, and franchise relationships against the four-factor test. Businesses should evaluate the degree of control they exercise over workers supplied by third parties and assess whether practices such as setting schedules or pay rates could support a joint employment finding. Companies should also consider submitting public comments before the June 22 deadline to help shape the final rule.

For further information on these developments, please contact [Ved Chitale](#).