

# THE JOURNAL RECORD

## Gavel to Gavel: Federal Court Strikes Down NLRB's Joint Employer Rule

By: [Brooks A. Richardson](#) // Guest Columnists // March 13, 2024



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Businesses continue to ride the roller coaster of uncertainty as partisans play tug of war with public policy.

Since 2015, the NLRB has been tugging hard left, seeking to broaden the circumstances under which companies could be considered joint employers. Under the NLRB's desired policy shift, an entity that reserved the right to exercise direct or indirect control over any one of seven factors, including health and safety rules, could be deemed a "joint employer" of workers

classified as contractors or temps and possibly subject to an obligation to recognize them as being part of a union subject to collective bargaining obligations.

This significantly departed from common law factors in place since 1982. The former Trump administration responded with a hard tug to the right, promulgating a rule in February 2020 that focused the inquiry on whether the potential joint employer actually exercised direct and immediate control over essential terms and conditions of employment. This also departed from common law.

In 2023, the NLRB reversed course again. Its "new rule" was scheduled to commence March 11, adding significant new liability risks for staffing companies/clients, franchisors/franchisees, affiliated businesses with common management, and businesses seeking to operate their sites safely with multiple contractors on site. Companies would need to monitor not only their own compliance with the NLRA, but also the compliance of any entity that might be deemed a co-employer.

The latest development arrived on March 8. A federal court in the Eastern District of Texas invalidated the NLRB's new rule. It will almost certainly be appealed.

For now, the NLRB's push to drastically expand the test for joint employment has been stalled. Common law tests will still apply. Further, different tests will apply to different laws, such as the FLSA.

As a result of this continued uncertainty, the landscape of employment law remains a challenging arena, with high stakes for businesses in managing their workforce and

contractors. Business leaders must stay informed and proactive in their employment practices, ensuring compliance with the evolving interpretations of joint employment while strategically managing their labor resources.

Employers, even those currently without a union representing a segment of the workforce, should seriously consider implementing labor relations training for managers and supervisors to mitigate against the growing risk of unionization that's spreading around the country.

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