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PRACTICE BRIEF · EMPLOYMENT LAW

NLRB Joint-Employer Rule Reinstated: Compliance Obligations for California Businesses

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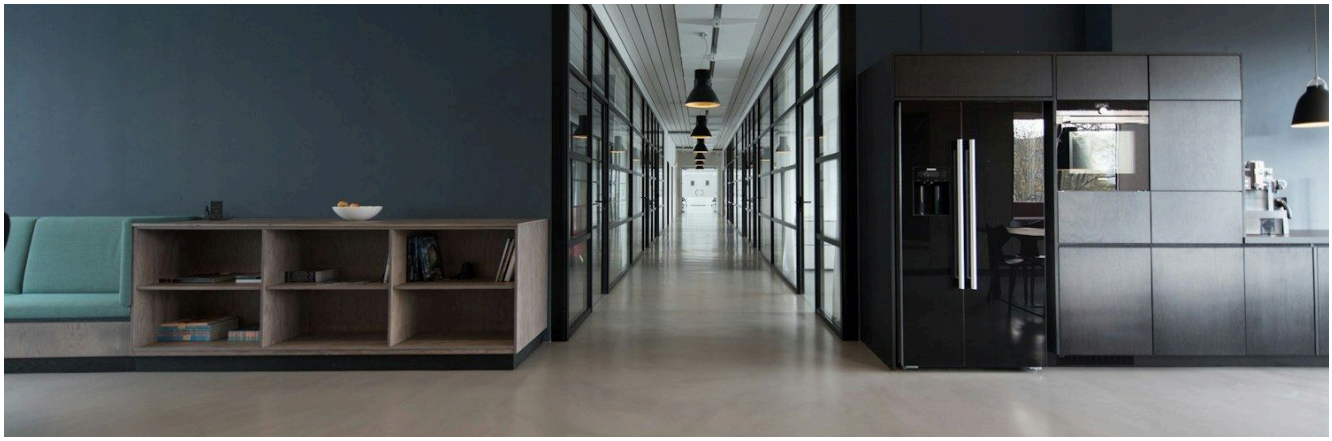

After years of litigation, regulatory reversals, and one federal injunction, the National Labor Relations Board's expansive **joint-employer standard** — first adopted in Browning-Ferris Industries, 362 NLRB 1599 (2015) and then codified by rule in 2023 — is again operative law. For California businesses that use franchisees, staffing agencies, subcontractors, or independent service providers, the reinstated rule creates compliance obligations that layer on top of California's already stringent employer classification framework.

This memo explains what the reinstated rule actually requires, where it differs from California's existing joint-employer tests, and what practical steps businesses should take now.

I. The Tortured Regulatory History

The NLRB's 2023 Final Rule defined joint-employer status under the National Labor Relations Act to include any entity that **has or exercises the authority to control** one or more essential terms and conditions of employment of another employer's employees — regardless of whether that control is actually exercised. This was a significant departure from the Trump-era 2020 rule, which required evidence of "substantial direct and immediate control."

A federal district court vacated the 2023 rule in March 2024. The Fifth Circuit reversed that vacatur in relevant part in late 2025, reinstating the rule's core standard. As of Q2 2026, the NLRB is applying the 2023 rule in pending proceedings.

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> *"The critical word in the reinstated rule is 'authority.' You do not need to exercise control. You need only to possess the contractual or operational ability to exercise it."*

II. What the Rule Actually Requires

A. Essential Terms Covered

Under the 2023 rule, "essential terms and conditions" include wages, benefits, hours of work, hiring, discharge, discipline, supervision, direction, and the assignment of work. Control over any one of these — even if unexercised — is sufficient to trigger joint-employer status.

The practical implication is that standard franchisor quality-control provisions (mandating uniform menus, service times, appearance standards), staffing agency assignment protocols, and subcontractor supervision rights may now qualify as control over "essential terms" if they functionally constrain how the secondary employer manages its workforce.

B. Bargaining Obligations

If found to be a joint employer, an entity must bargain with the union representing the other employer's workers — but only with respect to the essential terms over which it has authority. Joint employer status does not extend bargaining obligations across all employment terms; they are confined to the domain of control.

III. California's Existing Joint-Employer Tests

California has its own body of joint-employer law that operates independently of the NLRA standard. Under *Martinez v. Combs*, 49 Cal.4th 35 (2010), a joint employer under California wage orders must satisfy one of three tests: (1) the entity exercised control over wages, hours, or working conditions; (2) it suffered or permitted the work; or (3) it was engaged with the employee in a common law employment relationship.

The NLRB's reinstatement of an "authority-to-control" test is closer to the *Martinez* "suffered or permitted" prong than to the common-law test — meaning California businesses that already analyzed their exposure under *Martinez* may need to revisit that analysis in light of the federal rule, particularly if their concern is unionization and bargaining obligations rather than wage-and-hour liability.

IV. Who Is Most Exposed

- **Franchisors** who control brand standards, operating procedures, and technology systems that constrain franchisee staffing decisions
- **Staffing agencies and their client companies** — particularly where client companies retain the right to reject specific workers, set schedules, or supervise day-to-day work
- **General contractors** who direct the work of subcontractor employees on shared job sites
- **Technology platforms** that set algorithmic pay rates, work acceptance requirements, and performance metrics for workers nominally employed by a third party

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IMMEDIATE COMPLIANCE STEPS

- Audit franchise agreements, staffing agency MSAs, and subcontract terms for provisions that grant authority over scheduling, pay, or work assignment — even if never exercised
- Where possible, restructure agreements to remove or limit authority provisions not necessary for brand or quality-control purposes
- Evaluate whether any workforce covered by a collective bargaining agreement at a secondary employer creates a bargaining obligation for your organization
- Train operations and HR teams: verbal instructions to agency workers or contractor employees about how to perform tasks may independently satisfy the "direct supervision" prong
- Coordinate with California counsel — the NLRA joint-employer finding does not automatically resolve California wage-and-hour joint employer questions, but adverse NLRB findings can be used as evidence in state court proceedings

V. What Workers Should Know

If you work for a staffing agency, a franchise location, or a subcontractor, you may have more than one employer under the law. Joint employer status means that the company that controls your working conditions — even if it is not the entity that signs your paycheck — may have legal obligations to you.

In the union context, this means the controlling company must bargain over wages and conditions it controls. In the California employment context, it means you may have wage claims, discrimination claims, and retaliation claims against both your nominal employer and the controlling entity — and both may be liable.

This analysis reflects the regulatory posture as of Q2 2026 and may not reflect subsequent NLRB rulemaking or appellate decisions. Consult qualified employment counsel for advice specific to your situation.

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