Insights

DOL Releases Final Rule Narrowing the Definition of “Joint Employer” Under the FLSA

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On January 12, 2020, the U.S. Department of Labor (DOL) announced its final rule to narrow the definition of “joint employer” under the Fair Labor Standards Act (FLSA) and provide clarity to businesses about franchise and contractor relationships.

In the final rule, the DOL specified that in a scenario when an employee performs work for one employer that simultaneously benefits another person, that person will be considered a joint employer when that person is acting directly or indirectly in the interest of an employer in relation to the employee. The DOL also provided a four factor balancing test to use in a scenario where another person is benefitting from the employee’s work. Specifically, an employer must assess whether the other person: (1) hires or fires the employee; (2) supervises and controls the employee’s work schedule or conditions of employment to a substantial degree; (3) determines the employee’s rate and method of payment; and (4) maintains the employee’s employment records. Although, no single factor is determinative of joint employer status and the appropriate weight must be given to each factor depending on the circumstances.

In applying these factors, the DOL acknowledged that maintenance of employment records alone does not demonstrate joint employer status. In addition, the DOL clarified that an employee’s “economic dependence” on a potential joint employer does not determine whether it is a joint employer under the FLSA. The DOL also specified that an employer’s franchisor, brand and supply, or similar business model and certain contractual agreements or business practices do not make joint employer status under the FLSA more or less likely. Finally, the DOL provided a variety of examples to assist in determining whether joint employer status exists.

The final rule will likely result in a reduction of the number of persons who are joint employers, and, as a result, employees will have the legal right to collect wages under the FLSA from fewer employers. Notably, this is the first update to the joint employer rule in over 60 years. It is important that your business is properly classifying and paying its employees and independent contractors, so please contact us with any concerns regarding this rule and we can help ensure your practices are compliant. The effective date of the final rule is March 16, 2020.