

Continued Disparities in Joint-Employer Status Laws

March 24, 2026
By Peter Spanos



Updated on April 23, 2026

On April 22, 2026, the U.S. Department of Labor announced a plan to create one nationwide standard from multiple federal laws for when two or more employers can be jointly liable for workplace offenses. The proposed rule, as published in the [Federal Register](#), would eliminate the current disparate treatment of joint employer status under various federal laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act. The proposed singular rule would reduce the previous “economic realities” tests to just four criteria: (a) the power to hire or fire, (b) the ability to supervise or control a worker's schedule, (c) the power to determine the rate and method of payment to the worker, and (d) maintaining a worker's employment records. The new rule would not eliminate the disparities present in state laws discussed in the article below but would provide important clarification and simplification of federal laws on joint employer status. The new rule could also provide more guidance which may potentially resolve conflicting rulings in federal courts.

Federal law provides baseline joint-employer standards under the National Labor Relations Act (as interpreted and enforced by the National Labor Relations Board) and the Fair Labor Standards Act (as interpreted and enforced by the U.S. Department of Labor). States, however, have increasingly adopted their own joint-employer rules, often broader and more worker-protective. The result is an assortment of rules in which a business may be a joint-employer under state law but not under federal law or potentially even under the Fair Labor Standards Act but not the National Labor Relations Act.

National Labor Relations Act and National Labor Relations Board: Current Law

The operative rule is the 2020 Trump-era “direct and immediate control” standard. The following is a summary of the key developments that led to the current framework.

The 2020 standard established that to be deemed a joint employer, an entity must exercise “*substantial direct and immediate control*” over essential terms and conditions of employment. Workers were required to demonstrate this level of control by another entity over another entity's employees.

On October 27, 2023, the NLRB published a final rule that rescinded and replaced the 2020 rule. The proposed new rule would have dramatically broadened the standard by establishing that two or more entities may be considered joint employers if each:

- Has an employment relationship with the employees; and

- Shares or codetermines one or more of the employees' essential terms and conditions of employment.

On March 8, 2024, Texas federal judge J. Campbell Barker vacated the 2023 rule, holding that the test was unlawfully broad, as it would have allowed an entity to be deemed a joint employer with or without any exercise of meaningful control over the relevant employees' terms and conditions of employment.

As the 2023 rule never took effect, the prior 2020 rule remained the operative rule. The NLRB formalized this by revising its regulations, effective February 27, 2026, to replace the vacated regulatory text with the 2020 rule.

The NLRB had filed an appeal of the Texas court's decision in 2024, but given the change in administration and the formal February 2026 withdrawal of the 2023 rule, the broader Biden-era standard appears definitively off the table for now.

Fair Labor Standards Act and U.S. Department of Labor: Current Law

Similar “back and forth” changes have occurred in the U.S. Department of Labor's joint-employer criteria.

The DOL's current joint-employer criteria under the Fair Labor Standards Act (FLSA) and other federal employment laws hinge not only on whether two or more businesses, through association, share “substantial direct and immediate control” over an employee's essential terms and conditions—specifically hiring, firing, discipline, supervision, and pay—but also on the “economic realities” of the relationship of each employer to the employees. The current DOL focus is on whether a business “meaningfully affects” a worker's employment.

Key Aspects of Joint Employment (FLSA/DOL)

- **Influence Over Essential Terms and Conditions:** Includes hiring, firing, discipline, supervision, and pay.
- **Horizontal Joint Employment:** Exists when an employee works for two separate employers who are sufficiently associated (e.g., shared employees, common management). Hours worked for both must be combined for overtime pay.
- **Vertical Joint Employment:** Occurs when an employee of an intermediary (like a staffing agency) is economically dependent on another employer (the client).

Key Considerations

- **Control vs. Association:** The test is not just about ownership but whether they share control.
- **Overtime Liability:** Joint employers are jointly responsible for compliance, including overtime, for all hours worked.

Key Aspects of DOL Joint-Employer Criteria

- **Control and Association:** A joint employment relationship exists when employers share control over essential terms and conditions of employment, such as hiring, firing, payroll, and supervision.
- **Totality of the Circumstances:** No single factor determines the status; it is based on the entire relationship, including shared facilities, overlapping management, and interconnected business operations.
- **Shared Personnel:** An employee works for two different entities, such as two restaurant locations, in the same workweek.
- **Coordinated Operations:** Employers share managers, a kitchen, or other resources.
- **Economic Reality:** The worker is economically dependent on both potential joint employers.

This pre-2020 FLSA standard now governs wage-and-hour joint-employer liability, particularly for franchisors, staffing agencies, and companies using third-party contractors.

Different Applications of the FLSA by Different Courts

In 2024, the Supreme Court's decision in *Loper Bright Enterprises v. Raimundo* overturned the legal doctrine known as Chevron deference, meaning courts now exercise independent judgment in interpreting statutes and do not defer to agency interpretations simply because a statute is ambiguous. However, prior cases upholding specific agency actions remain good law.

As a result, while DOL regulations and guidance remain influential, federal courts now independently interpret the FLSA's joint-employer provisions, focusing on statutory text and the economic realities of the employment relationship. Consequently, employers in different federal court jurisdictions may be subject to different joint-employer criteria.

Patchwork of Differing State Laws

State joint-employer laws and regulations vary substantially across states. Some states coincide with or expressly follow federal standard. Other states have adopted independent and more expansive tests, with the result that some employers that are not joint employers under one or both federal laws are joint employers under one or more state laws.

The broader state tests include criteria such as:

- Economic dependence frameworks
- Statutory expansions targeting industries such as franchising or subcontracting

The result is a fragmented legal landscape where joint-employer status depends heavily on jurisdiction, industry, and the specific statute(s) that apply to the employer's operations.

Industry-Specific Joint-Employer Rules

Some states impose joint-employer obligations in targeted sectors:

- Construction (e.g., wage theft statutes making general contractors liable for subcontractor wages)
- Janitorial services (e.g., California's Property Service Workers Protection Act)
- Agriculture (e.g., state migrant worker protections)
- Fast food (e.g., California's recent reforms)

Federal law does not have comparable industry-specific joint-employer statutes.

Key Practical Takeaways

- *Under the NLRA*: The narrower 2020 standard applies, requiring actual, substantial, and direct control over employment terms to establish joint-employer status.
- *Under the FLSA*: A similar pre-2020 standard governs, but joint-employer liability for wage-and-hour purposes may be more easily established based on potential or indirect control, considering a variety of relevant facts.
- Businesses that utilize independent contractors, including franchise business models, should remain wary of these evolving standards.

This is an area of active legal and regulatory change, so consulting an employment attorney for advice specific to your situation is strongly recommended, along with regular review of federal and state laws that may apply to your operations.