

Federal Court in Texas Strikes Down NLRB Joint Employer Rule and Reinstates Prior Trump Era Rule

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On Friday, March 8, 2024, the United States District Court of the Eastern District of Texas entered an order that struck down the National Labor Relations Board's recently adopted 2023 regulations defining joint employer status and reinstating the prior 2020 regulations. The 2023 regulations had made joint employer status, and its attendant potential liabilities much broader than was the case under the 2020 regulations. The court found the new regulations were overbroad because they could be interpreted to allow a finding of joint employer status even when the putative joint employer did not meet the common law definition of an employer.

The key difference between the two sets of regulations is the degree of control that the putative joint employer must have over the other employer's employees. Under the 2020 regulations, the control had to be "direct and immediate" and pertain to terms and conditions of employment that were substantial or important to employees. In addition, the 2020 regulations suggested that actual exercise of the control was required before joint employer status could be found. The 2023 regulations state that both indirect and reserved control can be sufficient to support joint employer status, regardless of whether there is evidence the control was actually exercised.

A practical example of the difference would be a contractual provision between a vendor and a purchaser of services in which the purchaser retains the ability to approve personnel assigned by the vendor and to set schedules. Under the 2023 regulations, these factors would likely be sufficient to establish the purchaser's joint employer status even if the purchaser had never rejected a vendor employee or modified the schedules set by the vendor. Under the now reinstated 2020 regulations, the lack of exercise of the power would defeat a finding of joint employer status.

A unique aspect of the decision is the district court's decision to reinstate the prior regulations. The NLRB had argued that if the 2023 regulations were struck down, the NLRB should be allowed to revert to the case-by-case analysis that was in place before the 2020 regulations. The court rejected that theory, finding that the NLRB's decision to abandon the prior regulations arbitrary and capricious.

The decision will likely be appealed to the U.S. Court of Appeals for the Fifth Circuit. It is unclear whether the board will seek a stay of the decision, in order to allow the 2023 regulations to go into effect while the appeal is pending. We will be following the progress of the matter. If you have questions about the joint employer rule, please contact your Miller Canfield attorney or one of the authors of this alert.