

NLRB Delays Joint Employer Rule Effective Date to February

On Nov. 16, 2023, the National Labor Relations Board (NLRB) announced it would push the effective date of the new joint-employer rule to Feb. 26, 2024. The final rule was published in the Federal Register on Oct. 27, 2023, and was initially set to become effective on Dec. 26, 2023. However, the agency has delayed the effective date by two months to facilitate the resolution of legal challenges regarding the new rule. Notice of the extension will be published in the Federal Register.

The New Joint-employer Standard

The 2023 joint-employer standard establishes new criteria for determining joint-employer status as applied to labor issues related to the National Labor Relations Act. It will rescind the existing 2020 joint-employer standard and replace it with a more inclusive law, making it easier for employers to be classified as joint employers. Notable changes to the joint-employer standard include the following:

- Clarification of the definition of “essential terms and conditions of employment”
- Identification of the types of control that are necessary to establish joint-employer status and the types that are irrelevant to the joint-employer inquiry
- Description of the bargaining obligations of joint employers

Legal Challenges

On Nov. 9, 2023, a coalition of businesses sued the NLRB in federal district court, alleging the new joint-employer rule is unlawful, overly broad and contradictory to the common-law definition that

limits joint employment to relationships of actual and substantial control of working conditions. The lawsuit further alleges that the NLRB is acting arbitrarily and capriciously in violation of the Administrative Procedure Act. The group of businesses suing the NLRB includes the U.S. Chamber of Commerce, the National Retail Federation, the International Franchise Association, the American Hotel and Lodging Association, Associated Builders and Contractors, Associated General Contractors of America, and the National Association of Convenience Stores. Additionally, Senators Bill Cassidy and Joe Manchin announced they would introduce a Congressional Review Act resolution to overturn the rule.

Conclusion

The new joint-employer standard will only be applied to cases filed after the rule becomes effective on Feb. 26, 2024. Employers can prepare for the new rule by familiarizing themselves with the new standard and determining whether a more inclusive joint-employer standard will reclassify them as joint employers by the amended effective date.

We'll keep you apprised of any notable updates.