

NLRB Joint-Employer Update
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In 2023 the NLRB issued a revised Standard for Determining Joint-Employer Status under the National Labor Relations Act.

Under the new standard, an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine one or more of the employees' essential terms and conditions of employment, which are defined exclusively as: (1) wages, benefits, and other compensation; (2) hours of work and scheduling; (3) the assignment of duties to be performed; (4) the supervision of the performance of duties; (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline; (6) the tenure of employment, including hiring and discharge; and (7) working conditions related to the safety and health of employees.

A U.S. district court ruled last week that the NLRB's 2023 joint employment regulations—which provided that indirect or reserved control, even if never exercised, could be sufficient to establish joint employment—was defined overbroadly.

The court restored prior regulations requiring “substantial direct and immediate control” to establish joint employment.

The district court's ruling will most likely be appealed to the DC Circuit court.