

Client Alert

The National Labor Relations Board Issues Key Decision On Joint-Employer Status

August 28, 2015 – The National Labor Relations Board (“NLRB”) issued a landmark decision on August 27, 2015, ruling that companies can be held liable as a “joint-employer” for labor violations committed by their contractors who provide services or personnel to such entity. In its decision, the NLRB, in a 3-2 ruling, concluded that two or more entities are joint-employers of a single workforce if (i) they are both employers within the meaning of the common law; and (2) they share or codetermine matters governing the essential terms and conditions of employment.

Prior decisions from the NLRB held that companies were only responsible for employees who were under their direct control. Thus, prior to this ruling, in order to be deemed a joint-employer, a company must have had “direct and immediate” control to set hours, wages, and define job responsibilities. Under the new standard, however, a company will be deemed a joint-employer if it exercises even indirect control over working conditions. The critical factor is whether a company has the potential to exercise control over an individual’s wages, hours and working conditions, regardless of whether or not such control is actually exercised.

The NLRB’s ruling will have an immediate impact for staffing agencies and the companies that utilize their services. It will also dramatically impact how franchisors operate their businesses. Typically, franchisors allow their franchisees to handle ordinary day-to-day operations such as hiring and firing without fear of liability being imposed on the franchisor. Now that a franchisor is more likely to be held liable as a joint-employer, franchisors may choose to exercise tighter control over its franchisees’ day-to-day employment operations, or may, alternatively, choose to distance themselves from their franchisees’ operations in an attempt to avoid joint-employer status or liability. Critics of the decision, including the National Franchise Association, believe the NLRB’s ruling will hurt small businesses and are expected to call on Congress to intervene in preserving the previously established joint-employer standard. Conversely, labor unions view the decision as a major victory for workers and for their ability to organize such workforces.

If you require any additional information about joint-employer status, or any other employment-related issue, please contact:

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