



CLIENT ALERT

The Department of Labor Releases Final Rule on Joint Employer Status

On January 16, 2020, the United States Department of Labor (“DOL”) published its final rule to determine joint employer status under the Fair Labor Standards Act (“FLSA”). The rule takes effect on March 16, 2020.

Under the FLSA, an employee may have, in addition to their direct employer, one or more “joint employers” – separate independent entities that can be held liable for the employee’s wages, depending on the extent of control that entity has over the employee’s work.

Under the new rule, a person or entity will be considered a joint employer if that person or entity “is acting directly or indirectly in the interest of an employer in relation to the employee.” To determine whether a person or entity meets this requirement, the DOL has set forth the following four-factor test. The test focuses on actual control over the employee by assessing whether the separate entity or person:

- hires or fires the employee;
- supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
- determines the employee’s rate and method of payment; and
- maintains employee’s employment records.

The DOL explained that no single factor is dispositive in determining joint employer status — “[w]hether a person is a joint employer will depend on all the facts in a particular case, and the appropriate weight to give each factor will vary depending on the circumstances.” The Final Rule also notes that simply maintaining an employee’s employment records alone will not confer joint employer status. Additionally, the Final Rule expressly provides that the use of the franchise model or certain contractual arrangements such as entering into a brand and supply agreement does not make joint employer status more or less likely.

Overall, the new rule is advantageous to businesses. Indeed, the DOL commented that the revisions are necessary to “promote certainty for employers and employees, reduce litigation, promote greater uniformity among court decisions, and encourage innovation in the economy.”

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If you have questions or would like additional information, please contact EGS’s Employment Law Practice Group Leader, Amanda M. Fugazy at afugazy@egsllp.com or the primary EGS attorney with whom you work.



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