

NLRB Establishes New Joint Employer Test
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Client Alert

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On Aug 27, 2015, the National Labor Relations Board (NLRB) dramatically revised its test for the joint employer doctrine, under which two or more companies, even if not affiliated, may be held liable for each other's labor violations, and otherwise become more easily subject to a host of federal labor laws. Prior to the recent action by the NLRB, the traditional test for joint employer status required an entity to exercise substantial and direct control over an employment relationship. Under the new test, joint employer relationships exist where, with or even sometimes without common ownership, one company effectively and actively participates in the control of labor relations and employment conditions of workers in the second company such that both are considered to be the workers' employers. An employer can be held liable not only for its own labor violations, but also its affiliated or related entities if those entities qualify as a "joint employer." Joint employers can be forced to participate in collective bargaining, regardless of which employer may be considered the primary employer.

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