

# LEGAL MINUTE

## JOINT EMPLOYMENT-WHAT IS IT AND WHY DOES IT MATTER?

"Joint employment" occurs when more than one employer shares legal responsibility for the same employee.
Common situations creating joint employment may include:

- Temp Agencies
- Staffing Agencies
- Contractor/Subcontractors
- Leased employees
- Businesses with the same or overlapping owners
- Franchises

The test for whether more than one entity is an "employer" of an individual depends on the law and situation at issue. For example, whether two entities are joint employers may be different when considering a claim under anti-discrimination laws compared with wage and hour laws.

The federal Department of Labor (DOL) recently issued a new proposed rule for determining joint employment for purposes of the federal Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act so that joint employment can be determined consistently across the three laws. The proposed rule provides factors to consider depending on whether the arrangement involves "vertical" or "horizontal" joint employment. "Vertical" joint employment involves an arrangement under which an employee is employed for two or more employers who simultaneously benefit from the employee's work. "Horizontal" joint employment involves arrangements where an employee works separate hours for two or more employers in the same workweek, and the employers are sufficiently associated with each other with respect to the employment of the employee that they are joint employers.

A more detailed summary of the proposal from the DOL is available online:

**www.dol.gov/agencies/whd/nprm-joint-employer-status-under-flsa-fmla-mspa**

**Bottom Line:** There is no one test to determine whether multiple entities will be treated as a single employer under all laws. Moreover, the tests to determine joint employment change frequently, often coinciding with political shifts at the federal level. It is always wise to consult with an employment law specialist when considering whether joint employment applies.

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