



PEO Pointers: 4 Steps to Stay in Control of the Joint Employment “Right to Control” Debate

Insights

4.16.24

Welcome to “PEO Pointers,” a regular series of quick-read alerts to keep PEOs and their client companies up to speed on the latest issues affecting the industry and what they can do to ensure compliance. Today’s topic: the battle over joint employment recently took another twist when a federal court knocked down a troublesome new rule right before it was set to take effect. We’ll review four steps to ensure your PEO is positioned in the best possible way given the turbulent state of play.

As the proverbial – and seemingly endless – ping-ponging of the National Labor Relations Board’s joint employer rule plays on, it is clear that the right to control will always be an issue of significant legal consequence for PEOs. To succeed in the midst of ever-changing joint employer definitions, PEOs must develop robust strategies for staying on top of developments. In the wake of last month’s win for the employer community when a federal court judge in Texas struck down the NLRB’s controversial joint employer rule just before it was set to take effect, PEOs may be inclined to relax their focus on this issue. But the stakes continue to be high for the PEO community.

For now, the more PEO-friendly 2020 version of the NLRB’s joint employer rule remains in effect. This development delivers to PEOs the rare gift of time. Be sure not to waste it.

Are you uncertain how to work this gift to your advantage? Good news: We are here for you. Below are four simple steps for PEOs to get ready for whatever is next in the ongoing joint employer saga and avoid unintended joint employer issues.

1. **Get up to speed.** Here is a pithy summary of the joint employer rule journey so far. And since at some point we may end up back where we just came from, you will want to understand the NLRB’s 2023 rule that just was struck down so that you are prepared to navigate that rule.
2. **Review your service contracts.** If you have not had your service contracts reviewed in the last few years, now is an excellent time to work with your legal counsel to evaluate them. Pay careful attention for language that reserves the right of control (either directly or indirectly) over co-employed workers regarding the terms and conditions of employment, particularly language that may be required under certain state laws.
3. **Train for best practices.** Now is an excellent time to uptrain your client-facing personnel, including your HR professionals, on best practices for selling and providing PEO services and

including your HR professionals, on best practices for setting and providing PEO services and supporting clients without crossing the joint employer border. Consider putting together a few webinars, meetups, and brainstorming sessions.

4. **Stay in the know!** Finally, make sure to [subscribe to our FP Insights](#) to make sure you don't miss our next edition and any other developing news that breaks in the interim.

For more information, reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our [PEO and Staffing Team](#).

Related People



Linda J. Gulledge
Partner
949.798.2176
Email



John M. Polson
Chairman & Managing Partner
949.798.2130
Email

Service Focus

Labor Relations

Industry Focus

PEO, Staffing and Gig Workforce