

THE NEXT HY-BRAND: 3 CASES THAT COULD UNDO BROWNING-FERRIS

News

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In the recent article “The Next Hy-Brand: 3 Cases That Could Undo Browning-Ferris” in *Law360*, Steve Bernstein commented on the cases that could replace the standard for determining joint employment.

Now that the National Labor Relations Board has restored Browning-Ferris as the standard, management attorneys believe a case other than Hy-Brand, which is mired in ethical questions, should be used to articulate the new joint employer test. The NLRB’s records provide three cases with different situations where employees were either subcontractors or found through a staffing agent, but organizations were found as joint employers.

When asked about how the cases will be viewed, Steve explained: “What the agency is looking for is a case that crystallizes the essence of the question that was in front of the board in Hy-Brand, which is the [Browning-Ferris] doctrine. To the extent they’re dealing with a case that is cluttered with a large number of other fact patterns or items in dispute, that’s not the ‘pure’ case they’re necessarily looking for.”

Related People



Steven M. Bernstein

Regional Managing Partner
and Labor Relations Group
Co-Chair

813.769.7513