

Insights, News & Events

FP TRANSPORTATION AND SUPPLY CHAIN SNAPSHOT: NLRB'S PROPOSED JOINT EMPLOYER RULE WILL POSE NEW CHALLENGES FOR EMPLOYERS

Insights
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This FP Transportation and Supply Chain Snapshot is intended to ensure industry employers are aware of an impending rule from the National Labor Relations Board that could upend the way you do business. The agency is seeking to revive a rule that will greatly broaden the circumstances in which your business may be deemed to jointly employ the workers of another business – of particular interest to those in the trucking, logistics, and related industries. What do you need to know about this imminent change?

Summary of Impending Rule

Our full Insight, [which you can read here](#), summarizes the NLRB's proposed rule, released on September 6. Under the proposal, evidence of potential control – even if unexercised – and indirect control over any working conditions could be deemed sufficient to confer joint employer status. Under the Board's proposal, two or more employers could be considered joint employers merely by sharing or co-determining matters governing employees' essential terms and conditions of employment, such as wages, benefits, hiring, scheduling, disciplining, and firing.

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Particular Impact on Transportation and Supply Chain Employers

The supply chain is more integrated than ever. Customer expectations require the sharing of information, keeping them up to date throughout the transport process. Adding to these challenges, driver shortages are at an all-time high. Seasonal demands also drive transportation and supply chain employers' need for an agile workforce.

Faced with meeting such demands and challenges, transportation and supply chain employers frequently look to vendors and service partners to help them staff up when necessary through flexible work arrangements. The use of staffing companies and other alternative employer service providers has skyrocketed in the industry due to the versatility these arrangements can bring.

But because many employers in the transportation industry are subject to U.S. Department of Transportation regulations and provisions, there could be trouble ahead when it comes to these relationships. It is common in such business-to-business agreements for a business retaining workers through third-party employment relationships to ensure these workers are complying with, for example, Hours of Service Regulations. Under the impending new rule, this could be argued to constitute "reserved" or "indirect" control and render that worker a joint employee of both businesses.

The result of the proposal, if finalized and adopted as expected, will be decreased flexibility for transportation and supply chain employers of all types across the country. Under the proposed rule, you can expect to see increased costs and legal exposure – and may be subject to additional union bargaining requirements.

What's Next?

The notice-and-comment period for the proposal will run through mid-December. Once the agency reviews

and considers all comments, it is expected to publish the new rule in early 2023. We will continue to monitor the situation and provide updates as more information becomes available. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. Any questions may be directed to your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Transportation and Supply Chain Industry Team](#).