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FP STAFFING SNAPSHOT: NEW DOL JOINT EMPLOYER PROPOSAL IS GOOD NEWS FOR THE STAFFING INDUSTRY

Insights
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FP Staffing Snapshot: New DOL Joint Employer Proposal Is Good News for the Staffing Industry

The US Department of Labor just proposed a new rule to give businesses greater clarity and reduced liability around joint employer status under federal wage and hour law, and few industries will benefit as much as staffing. How the DOL defines joint employment has direct consequences on how you structure client relationships, negotiate service agreements, and manage your co-employment exposure. Here's a quick recap of what the DOL just proposed and a staffing-specific guide for what this means for your business model.

Quick Recap of New Joint Employer Proposal

The DOL's Wage and Hour Division released a proposal outlining a four-factor test to determine when two businesses are legally considered joint employers under the FLSA, FMLA, and MSPA. With no single factor being dispositive, the test examines whether:

- a business hires or fires the employee;
- supervises and controls their work schedule or conditions of employment to a substantial degree;
- determines their rate and method of payment; and
- maintains their employment records.

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The proposal largely mirrors a 2020 Trump administration rule that was subsequently blocked by a court and later rescinded under Biden, though this version places greater emphasis on *actual* control over merely *reserved* control. You can read our full recap here.

Top 5 Things Staffing Leaders Need to Know About Joint Employer Proposal

Here's a list of the top five things you need to know about this proposal from a staffing industry perspective.

The proposed rule essentially codifies what good staffing contracts already assume.

The DOL's four-factor test asks whether a business hires or fires the employee, supervises and controls their work schedule or conditions of employment to a substantial degree, determines their rate and method of payment, and maintains their employment records. These are precisely the boundaries that experienced staffing counsel have been drawing up in client service agreements for years, delineating what the agency controls versus what the client company controls.

The proposal's emphasis on *actual* control over *reserved* control is particularly significant here. Under the proposed framework, a client company's contractual right to approve or reject workers doesn't automatically make them a joint employer. What matters is whether they actually exercise that control in practice. For staffing firms that have carefully structured their agreements to retain real operational authority over their workforce, this is a meaningful validation of that approach.

Vertical joint employment is your primary concern, and the proposal addresses it directly.

The DOL rule distinguishes between vertical and horizontal joint employment. Vertical joint employment (where a worker is employed by your firm and the client company benefits from that worker's labor) is the scenario you navigate every day. The proposal focuses its four-factor analysis squarely on vertical arrangements, which means the guidance is directly relevant to your MSA and service agreement terms.

Horizontal joint employment, where related entities employ the same worker and must aggregate hours, is a scenario

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staffing firms encounter less frequently but shouldn't ignore. This is particularly true if firms run multiple brands or entities under a common ownership structure.

This proposal reduces your exposure in wage and hour investigations, but doesn't eliminate client risk.

Under the proposed standard, a client company is far less likely to be dragged into a DOL wage and hour investigation arising from your workforce if they haven't been exercising actual, day-to-day control. That's good news for your business development conversations. Clients who have been wary of staffing arrangements because of co-employment exposure now have a cleaner framework to point to.

That said, the rule doesn't change state-level joint employer standards. Some of your biggest markets (California and New York chief among them) apply broader tests than what the DOL is proposing. If you're placing workers in those states, federal relief doesn't mean state relief, and your agreements need to reflect that reality.

Don't confuse this with the NLRB union rule as they serve different purposes.

In February, the NLRB restored its own business-friendly joint employer standard which governs collective bargaining rights and unfair labor practices under the National Labor Relations Act. The DOL rule being proposed now is separate, only governing wage and hour obligations under the FLSA, family leave under the FMLA, and protections for migrant workers under the MSPA.

Your compliance teams should understand that these are distinct frameworks with different enforcement mechanisms, and your legal strategy needs to account for both.

The comment period is your opportunity to weigh in.

The public has 60 days to submit comments on the proposed rule. Industry associations will likely be mobilizing member input, and individual firms with significant exposure to joint employer claims have good reason to participate directly. You can either support the framework or flag provisions that create operational uncertainty for your specific business model. This is also a good time to loop in

government affairs counsel if you haven't already. You can reach out to our FP Gov Team for guidance and best practices.

3 Steps Staffing Firms Should Take Now

1. Audit your client service agreements. Review your MSAs and service agreements against the four-factor framework. The goal is to confirm that your agreements reflect the actual division of employment authority between your firm and your clients, and that they're not inadvertently conferring control in ways that could trigger joint employer status under the proposed test.

2. Map your state exposure. The DOL rule provides a federal compliance roadmap, but it won't override California, New York, or other state-level standards. Work with your legal team to identify the jurisdictions where your placements are most concentrated and understand where state law may impose a higher bar.

3. Consider submitting a public comment. If the proposed rule works for your business model, say so. If there are provisions that create uncertainty for staffing-specific arrangements (MSP relationships, VMS-managed programs, direct sourcing models, etc.), now is the time to get that feedback into the rulemaking record. Again, reach out to our FP Gov Team for guidance and best practices.

Conclusion

Fisher Phillips will continue to track the rulemaking process and any litigation that emerges, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox. For questions specific to your staffing operations, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Staffing Industry team.