

WHAT RETAILERS NEED TO KNOW ABOUT THE NLRB'S JOINT EMPLOYER STANDARD + 4 COMPLIANCE STEPS TO TAKE NOW

Insights
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What Retailers Need To Know About The NLRB's Joint Employer Standard + 4 Compliance Steps To Take Now

Retail employers frequently operate through complex business arrangements – ranging from franchising models to staffing partnerships and in-store concessions. But, these relationships can unwittingly create potential legal liability for retailers that are found to have too much control over their subcontracted staff or franchisees. The National Labor Relations Board's (NLRB) current joint employer standard, although more lenient than previous versions, continues to carry significant implications for retailers. This Insight will cover everything retail businesses should know about the NLRB's approach to joint employment.

A Narrower Standard – But Risk Remains

Joint employment situations arise when federal agencies, like the NLRB or the Department of Labor (DOL), find that more than one business controls the essential terms of a worker's employment, and thus are jointly liable for the worker under the law.

The NLRB's current framework generally says an entity is a joint employer only where it **possesses and actually exercises substantial direct and immediate control** over essential terms and conditions of employment, such as hiring, firing, discipline, supervision, benefits, wages, and scheduling.

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While this standard is more favorable to employers than prior iterations, it does not eliminate risk – particularly in industries like retail, where operational overlap between entities is common. For our full coverage of the NLRB rule and its evolution, [read more here](#).

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Changes on the Horizon at Other Agencies: While this primer covers everything retailers need to know about the NLRB's joint employer rule, keep in mind that the NLRB's standard is distinct from the joint employer rule being proposed at the DOL. The proposal from the DOL's Wage and Hour Division applies to joint employment issues involving minimum wage and overtime pay rules, child labor limits, as well as enforcement actions brought under the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). [Read more about how the DOL's rule will impact retailers here](#).

Four Retail Relationships That Deserve Attention

Franchisor-Franchisee Models

Franchising remains a cornerstone of the retail industry – and a frequent target for joint employer scrutiny. Franchisors may continue to enforce brand standards and protect system uniformity. However, when franchisors move beyond brand protection and into **day-to-day personnel decisions**, such as directing discipline, influencing hiring decisions, or controlling scheduling practices, your joint employer risk can significantly increase.

Key Takeaway: Brand control is permissible; **employee control is where exposure arises**.

Staffing and Temporary Agencies

Retailers often rely on contingent, leased, or temporary labor to address seasonal demand, inventory cycles, and specialized functions.

Joint employer risk may arise where retailer personnel:

- Directly supervise agency workers,
- Set or meaningfully influence wages or schedules, or

- Participate in discipline or termination decisions.

Key Takeaway: The more a retailer's managers **act as the supervisor of record**, the more likely a joint employer finding becomes.

In-Store Concessions and Service Providers

Retail environments frequently include third-party operators working within a host store, such as coffee shops, branded product counters, or service providers for security or cleaning services.

These relationships can create risk where:

- Store management directs concession or service provider employees' daily work,
- Policies are applied uniformly across both workforces, or
- The retailer controls key aspects of scheduling or performance.

Key Takeaway: Maintaining **operational separation in practice – not just on paper – is critical.**

Parent Companies and Affiliated Entities

Many retail organizations utilize multi-entity structures for operational, financial, or legal purposes.

However, the NLRB will look beyond corporate formalities and examine whether a parent or affiliated entity:

- Directly participates in hiring, firing, or discipline,
- Exercises supervisory authority, or
- Centralizes control over core employment functions.

Key Takeaway: Separate entities must also maintain **separate control over key employment decisions** to reduce risk.

What Should Retail Employers Do Now?

Retailers may want to take this opportunity to reassess business relationships and operational practices in light of the NLRB's current standard. Key considerations include:

1. Review agreements: Ensure contracts with franchisees, staffing agencies, and vendors clearly allocate responsibility for employment decisions. Consider indemnification provisions to allocate risk.

2. Align practice with paper: Confirm that day-to-day operations reflect contractual boundaries.

3. Train frontline managers: Store-level decisions often drive joint employer findings. It's important to ensure managers understand appropriate limits with contracted or temporary staff.

4. Evaluate high-risk arrangements: Periodically audit franchising, staffing, and concession relationships for potential exposure. Contact your Fisher Phillips attorney for assistance in reviewing your contracts and agreements.

Conclusion

We will continue to monitor the NLRB's joint employer standard and provide updates as the rule remains subject to ongoing legal and regulatory shifts. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Retail Industry Team](#).