Federal District Court Vacates Portions of New Department of Labor Joint Employer Rule

On September 9, 2020, District Court Judge Gregory Woods vacated a large portion of the final rule regarding joint employers ("the Final Rule") that U.S. Department of Labor ("DOL") published on January 16, 2020 and that became effective on March 15, 2020. The Final Rule was purportedly written to create more certainty for companies to enable them to determine whether they are joint employers of employees under the Fair Labor Standards Act ("FLSA"). The Final Rule covered two scenarios: first, "vertical employment," where a third-party simultaneously benefits from an employee's work for the employer; and second, "horizontal employment," where the employee works for two different companies that are sufficiently associated to be considered joint employers.[1] The plaintiffs (seventeen states and the District of Columbia) only challenged the vertical employment scenario, and Judge Woods acknowledged that the horizontal employment regulations remain valid.

The (now vacated) Final Rule included two regulatory shifts, which the court focused on: *first*, it adopted a four-factor balancing test to determine joint-employer status, and; *second*, it identified factors that were not relevant to joint-employer status.[2] The four-factor test required a company to actually exercise control over a person to be his or her joint employer, and limited the relevancy of other factors. Additionally, the Final Rule stated that whether the employee was economically dependent on the third-party company had no relevance in determining whether that company was a joint employer of the employee. Further, the Final Rule declared that whether the third-party and an employer are in a franchisor-franchisee relationship has no relevance to whether a joint-employer relationship existed.

The court first rejected the DOL's definition of "employer" because its interpretation was narrower than that of the FLSA and U.S. Supreme Court precedent. Next, the court ruled that the four-factor test conflicts with the FLSA because it sets forth necessary conditions for a third-party to be considered a joint employer, which was impermissibly narrower than the definition of joint employer under common law. Further, the court ruled that the DOL's declaration that economic dependence is irrelevant to determining joint-employer status was contradictory to the FLSA, the caselaw, and the DOL's previous interpretations. Finally, the court ruled that the Final Rule was arbitrary and capricious for, among other reasons, not attempting to calculate how much the Final Rule would cost workers.

The court (largely) vacating the Final Rule unwinds the DOL's efforts to streamline the joint-employer issue under the FLSA. Employers and courts will likely revert back to the case law of each federal circuit court to determine whether a joint-employer relationship exists for a vertical employment scenario. The DOL has not announced whether it will appeal Judge Woods' ruling, though business groups have been allowed to intervene and will likely advance an appeal themselves. If the DOL (or intervenors) do appeal, it is unlikely that the appeal will be heard before the 2020 election.

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[1] An example of a vertical employment FLSA scenario is whether a company is liable for FLSA minimum wage claims of its contractor's employee. An example of a horizontal employment FLSA scenario, the less common scenario, is whether two restaurants are liable for FLSA violations when they both employ a single person who works more than 40 hours per week between the two restaurants.

[2] For the full summary of the Final Rule, please see https://hrprofessionalsmagazine.com/2020/02/27/the-department-of-labors-new-regulations-to-determine-joint-employer-status-for-flsa-liability/.