

Legal Minute

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FINAL RULE: JOINT EMPLOYER

On January 12, 2020, the Department of Labor (DOL) announced a final rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA), a rule that has not been meaningfully updated in over 60 years.

The final rule continues to recognize two potential scenarios where an employee may have one or more joint employers. In the first scenario, the employee has an employer who suffers, permits or otherwise employs the employee to work, but another individual or entity simultaneously benefits from that work. The following test determines whether the potential joint employer is directly or indirectly controlling the employee, assessing whether the potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

In addition, the final rule also sheds light on when other factors may be relevant to a determination of FLSA joint employer status and identifies certain business models, contractual agreements with the employer, and business practices that do not make joint employer status more or less likely.

In the second scenario, one employer employs an employee for one set of hours in a workweek, and another employer employs the same employee for a separate set of hours in the same workweek. The final rule did not make any significant changes to the standard for determining joint employer liability in this second scenario. Each employer may disregard all work performed by the employee in determining its liability under FLSA if the employers are acting independently of each other and are disassociated with respect to the employment of the employee.

The final rule takes effect on March 16, 2020. For more information, visit <https://www.dol.gov/agencies/whd/flsa/2020-joint-employment>.

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