The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

Bassford Remele Labor & Employment Practice Group

What the NLRB's "New (Old)" Joint-Employer Rule Means for Employers in 2026

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In February 2026, the National Labor Relations Board ("NLRB") once again reshaped the joint-employer landscape by reinstating a narrower, more employer-friendly standard. For businesses that rely on subcontractors, staffing agencies, or franchise models, the shift carries meaningful, real-world consequences—particularly with respect to exposure to unfair labor practice claims and collective bargaining obligations.

A Brief Refresher on Joint-Employer Status

Under the National Labor Relations Act ("NLRA"), two separate entities may be considered joint employers if each exercises sufficient control over the same group of employees. When that threshold is met, both entities may be held responsible for compliance with federal labor law, including liability for unfair labor practices and participation in collective bargaining. The central question, as always, is how much control is enough to warrant a joint-employer relationship.

The 2026 Shift Back to Direct Control

The NLRB's 2026 rule returns to a more restrictive framework, requiring proof that an alleged joint employer exercises "substantial direct and immediate control" over the essential terms and conditions of another company's employees. In practice, this means control over core functions such as hiring and firing, discipline, supervision, and the setting of wages and schedules.

This marks a clear departure from the 2023 rule, which permitted joint-employer findings based on indirect influence or even contractual authority that was never exercised. In March 2024, the U.S. District Court for the Eastern District of Texas invalidated the 2023 rule, holding that it was

"arbitrary and capricious." The court reasoned that the term "employee" under the NLRA is grounded in common-law principles, and that the rule's broader standard departed from those well-established doctrines.

That decision created a regulatory gap. Although the Biden-era rule was vacated, the Code of Federal Regulations had not yet been updated to reinstate the prior standard, leaving the Board without a codified rule.

By refocusing the inquiry on actual, hands-on control, the current standard offers employers a more predictable and confined path to liability.

Where Exposure Still Arises

Despite the narrower standard, joint-employer risk has not disappeared. The NLRB continues to focus on what actually occurs in the workplace, rather than what is written in an agreement. Employers that step into a direct managerial role by supervising another entity's employees, influencing hiring or termination decisions, or controlling compensation and scheduling may still find themselves within the scope of joint-employer liability. In other words, contractual disclaimers will carry little weight if day-to-day operations tell a different story.

This risk often emerges in familiar, fact-intensive scenarios. A well-intentioned project manager who begins directing subcontractor employees, a franchisor that becomes overly involved in personnel decisions, or a host employer that effectively manages temporary workers supplied by a staffing agency can all create the kind of direct control that supports a joint-employer finding. Similarly, participating in or dictating a worker's removal from a project may cross the line into shared employment responsibility.

Key Takeaways for Employers

In light of the 2026 rule, employers would be well served to revisit both their agreements and their operational practices. Contracts should clearly define independent roles, but just as importantly, internal teams, like frontline supervisors, should understand the limits of their authority when interacting with non-employees.

Equally critical is a candid evaluation of day-to-day practices. Even carefully drafted agreements will offer limited protection if, in reality, a company is directing another entity's workforce. Employers should aim to maintain oversight at a high level, focusing on outcomes and performance standards rather than direct supervision of personnel.

The joint-employer standard has shifted multiple times over the past decade, often reflecting changes in the composition and priorities of the NLRB. While additional changes remain possible, the current rule provides a more stable and predictable framework, at least for now.

The Bassford Remele Labor and Employment Group closely monitors developments at the National Labor Relations Board and helps employers stay ahead of shifting standards. From advising on joint-employer risk to reviewing independent contractor classifications and

workplace policies, the team provides practical, business-focused guidance tailored to each client's operations. Please reach out with any questions.

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