

NLRB Clarifies Joint-Employer Standard

On February 23, 2026, the National Labor Relations Board clarified the standard it uses to determine when a company becomes a joint employer of contracted workers, an issue that has been in litigation for over a decade.

The NLRB has determined that two or more companies are “joint employers” of the same group of employees if they can make decisions (separately or jointly) about the essential terms and conditions of employment of the employees at issue.

The NLRB has defined where the joint employer line is drawn. On one side of that line is control that does not support joint-employer status: routine features of a business-to-business contract, such as setting project objectives, defining the scope of services to be performed, capping contract costs, and monitoring or evaluating the results of a contractor’s work. On the other side is control that does support joint-employer status: the ability to control the manner, means, and details of how workers actually perform their jobs.

Applying that framework, the Board found that Browning-Ferris exercised direct control over the manner, means, and methods of work performed by staffing-agency employees because Browning-Ferris supervisors set the speed of conveyor lines that dictated the pace of work, directly instructed workers on sorting techniques, directed housekeepers to complete specific cleaning tasks, transferred individual sorters between work stations based on skill, and held meetings with workers to provide detailed instructions about job performance. The Board held that this level of direct control over the details of how workers performed their duties was by itself sufficient to establish joint-employer status.

Browning-Ferris also exercised direct control over the wages paid to staffing company employees – the staffing agreement prohibited the agency from paying any of its workers more than Browning-Ferris paid its own employees, which created a hard wage cap that directly limited the agency workers’ wages.

Finally, Browning-Ferris supervisors regularly identified performance issues with the agency workers and passed their concerns to the staffing agency’s supervisors, who were expected to address them with the workers and on two occasions emailed the staffing agency requesting the immediate dismissal of workers for misconduct, which also demonstrated joint-employer status.

The Board emphasized that this analysis does not affect matters arising after the effective date of the Board’s 2020 joint-employer rule, which reinstated a stricter “direct and immediate control” standard.

Managing a contract is not the same as managing the work and when an employer's day-to-day involvement with the employees of a separate company extends to directing how the workers perform their tasks, setting their pace, or capping their wages, it is likely that the NLRB will find joint-employer status.