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New Proposed Rule: Joint Employer Status Under the FLSA, FMLA, and MSPA

Elizabeth L. Bolduc, Esq., & Juliana N. Fierro, Esq.
April 2026

On April 22, 2026, the U.S. Department of Labor ("DOL") unveiled a proposed rule to determine joint employer status under the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act. The DOL's rule is intended to provide a uniform standard for determining joint employment status, to simplify enforcement, to reduce litigation, and provide a level of clarity for employers and workers entering into specific employment arrangements.

The DOL's new proposal advances a singular, nationwide standard which recognizes two forms of joint employment, vertical and horizontal employment. Vertical joint employment arises when an employee is "jointly employed by two or more employers that simultaneously benefit from the employee's work," which can include staffing agency relationships, or contractor and subcontractor interactions. The proposed rule adopts a four-factor analysis to determine whether vertical joint employment exists, focusing on whether the alleged 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.

Additional factors can be relevant to the analysis, but a unanimous finding of the four factors would establish a "substantial likelihood" of whether an individual or entity is a joint employer with another. Further, the employer's "ability, power, or reserved right to act in relation to the employee" is relevant to the analysis; however, the DOL instructs that the employer's actual exercise of control is more relevant than just the potential for control.

Conversely, horizontal joint employment occurs when an employee works separate hours for more than one employer in the same workweek "and the employers are sufficiently associated with each other with respect to the employment of the employee such that they are joint employers." Employers are considered "sufficiently associated" if:

- There is an arrangement between them to share the employee's services;
- One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or
- They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The new proposed rule largely mirrors the pre-2020 horizontal employer analysis, which focuses on the relationship between employers based on the totality of the facts and circumstances.

The DOL also provides a list of business models and practices which, "standing alone, do not categorically or in the abstract make joint employer status more or less likely." These actions include:

- Operating as a franchise, brand-and-supply agreements, and similar business models;
- Compliance with legal obligations or health and safety standards;
- Quality control and brand reputation standards; and
- Basic business practices, like providing sample employee handbooks, offering an association health or retirement plan, or jointly participating in an apprenticeship program with another employer.

The proposed rule is not final, and interested parties have the opportunity to submit comments regarding the rule for 60 days, with the comment period closing at 11:59 p.m. on June 22, 2026.

Employers, particularly those with businesses who interact with staffing agencies and subcontractors, should remain informed of any updates regarding the proposed rule.

Elizabeth Bolduc is a Partner and Juliana Fierro is an Associate in Eastman & Smith Ltd.'s Labor and Employment group. They partner with human resource professionals to make workplaces better (and legally compliant). Elizabeth can be contacted at 419-241-6000 or elbolduc@eastmansmith.com. Juliana can be reached at 419-241-6000 or jnfierro@eastmansmith.com.