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National Labor Relations Board Abandons Joint Employer Rule Appeal



On July 19, 2024, the National Labor Relations Board (NLRB) voluntarily dismissed its appeal of a federal district court’s decision vacating the NLRB’s 2023 joint employer final rule.

After the U.S. District Court for the Eastern District of Texas ruled against implementation of the final rule on February 26, 2024, the NLRB filed a notice of appeal to the U.S. Court of Appeals for the Fifth Circuit on May 7, 2024. The NLRB’s motion for voluntary dismissal was unopposed, making the Eastern District of Texas’ ruling final. In withdrawing its appeal, the NLRB stated its intention to reconsider the rule based on the legal issues raised in the litigation. This could result in reissuance of the 2023 rule, revisions to the rule, or abandonment of the rule entirely.

The rule was also challenged in two cases filed in the U.S. Court of Appeals for the D.C. Circuit, traditionally a more favorable forum for the NLRB than the Fifth Circuit. One case is stayed, and one has been held in abeyance. It is unclear what impact, if any, the dismissal will have on the pending cases in the D.C. Circuit.

The 2023 final rule has not gone into effect. As it stands, the joint employer rule adopted in 2020 (the 2020 rule) by the NLRB during the Trump administration remains in effect. The 2020 rule declines to extend joint employer status unless the alleged joint employer exercises “substantial direct and immediate control” over the employees’ “essential terms and conditions of employment.” The 2023 rule, in contrast, would allow indirect or reserved control to be the sole basis for finding a joint employer relationship, without regard to the extent of the reserved or indirect control, exposing many more employers to joint employment obligations and liabilities under the National Labor Relations Act.

Next Steps

Employers should continue to monitor the progress of the joint employer rule and closely examine their relationships with other companies’ employees. What happens next will depend primarily on the Senate

confirmation process and the outcome of the upcoming presidential election. President Joe Biden nominated NLRB Chair Lauren McFerran to serve another term and Joshua Ditelberg, a partner at Seyfarth Shaw, to fill the currently vacant seat. If the Senate does not confirm them and the Democrats lose in November, a new Republican majority could be in place in early 2025, which would likely cement the 2020 rule for years to come.

Authors

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