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Court Decision Halts FLSA Joint Employment Rule

On September 8, 2020, the U.S. District Court for the Southern District of New York issued an order that effectively halts the enforcement of the U.S. Department of Labor's (DOL) recently promulgated rule regarding joint employment under the Fair Labor Standards Act (FLSA). This ruling impacts staffing agencies, subcontractors and entities whose employees perform work for the benefit of another entity.

The Court Strikes Down the DOL's Test

In March 2020, the DOL clarified and limited the circumstances under which employers could be held liable for minimum wage and overtime violations under the joint employer rule. It adopted a four-factor balancing test that requires courts to consider 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 employees' rate and method of payment; and
- Maintains the employee's employment records.

Several states—including California, New York, Illinois, Minnesota and Michigan—filed a lawsuit seeking to stop this rule from taking effect. The plaintiffs' primary argument is that the new rule "impermissibly narrow[s] the FLSA's coverage" and represents an unjustifiable departure from the text of the statute and existing precedent. According to plaintiffs, the regulation would prevent courts from considering other factors that are relevant to the existence of a joint employer relationship.

The court largely agreed with the states' position and struck down most—but not all—of the DOL's regulation. In its decision, the court acknowledged that the rule distinguishes "vertical" and "horizontal" joint employment relationships. The former exists when the employee is directly employed by a staffing agency, subcontractor, or other intermediate employer and performs work for a "secondary" employer. A horizontal relationship occurs when multiple entities—for example, two restaurants with common ownership—"share" employees. The court eliminated the portion of the rule addressing vertical employment relationships, including the four-factor balancing test.

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Key Takeaways

Although it is possible that the DOL will file an appeal, employers should be wary of relying on the four-factor test. Instead, employers should work with counsel to determine how this decision applies to their business structure and whether they should follow guidance that existed before the March 2020 regulation took effect.

If you have a question about how the order impact your business and your employees, please contact, please contact Rob Driscoll or your Reinhart attorney.