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EMPLOYMENT LAW UPDATE

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NLRB EXPANDS DEFINITION OF JOINT EMPLOYER

The National Labor Relations Board ("NLRB") recently announced a new standard for determining joint employer status under the National Labor Relations Act ("NLRA"). This announcement changed decades of precedent and expanded the definition of the joint employer relationship.

Under the new standard, the NLRB may find that two or more employers are joint employers of the same employees if they "share or codetermine those matters governing the essential terms and conditions of employment." To reach that determination, the NLRB will focus on whether the potential joint employers possess sufficient control over employees' essential terms and conditions of employment. Under the new standard, if a potential joint employer has the ***ability*** to control the terms and conditions of employment (even if never exercised) or possesses indirect control through an intermediary (such as a staffing agency), it will be deemed a joint employer.

Once identified as a joint employer, an employer is obligated to bargain with any applicable bargaining representative chosen by its employees (such as a union). The obligation to bargain, however, is only to the actual issues over which each employer has control. For instance, if employers A and B are joint employers, and employer A is the only entity that sets wages, employer B would not need to bargain over wages. But if employer A requires employees to work Monday-Friday between 8 a.m. and 5 p.m., and employer B actually sets the daily schedules of employees, both employers would be required to bargain over hours worked.

This decision, which involved a standard staffing arrangement between a staffing agency and client, will have a major impact on staffing agencies and all employers. An entity that was previously not a joint employer because of its lack of direct control will now be seen as a joint employer. In addition, other federal agencies, such as the EEOC, may use this decision as a basis to re-examine and broaden the joint employer standard for other laws. Therefore, employers should be sure to stay informed about any changes to avoid unexpected legal issues. In addition, companies should look at their business relationships to determine if they may be deemed a joint employer under the new standard. This analysis must include vendors, service providers, and other entities with which the company may have indirect control over employees.

If you have any questions about determining a joint employer relationship or if you need any other assistance in labor or employment law, please contact:

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