

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

MARCH 14, 2024

### Texas Federal Court Strikes Down NLRB Joint Employer Rule

On March 8, 2024, the Eastern District of Texas issued a decision striking down the National Labor Relations Board's (NLRB or Board) recently-adopted rule governing the standard for joint employer status, further delaying the rule's implementation.

In its decision, the district court held that the Board's new joint-employer rule was unlawfully broad because, rather than requiring some level of actual control over the disputed employees, the rule allowed an entity to qualify as a joint employer simply by having the power to exercise indirect control over one essential term or condition of employment, even if the entity did not actually exercise that control. The court determined that such a rule exceeded the bounds of the common law and was, therefore, contrary to law.

#### Background

As we previously reported [here](#), on Oct. 27, 2023, the NLRB issued a final rule (the Final Rule) that vastly broadened the definition of joint employment under the National Labor Relations Act (NLRA) by replacing the previous rule's focus on "direct and immediate control" with a less-demanding standard intended to ground the joint-employer rule in common-law agency principles. The Final Rule was originally scheduled to take effect on Dec. 26, 2023.

On Nov. 9, 2023, the U.S. Chamber of Commerce (Chamber) and a coalition of business groups filed suit against the NLRB in the Eastern District of Texas challenging the lawfulness of the Final Rule. Around the same time, the Service Employees International Union (SEIU) filed a petition to the D.C. Court of Appeals seeking review of the Final Rule.

As a result of the proceedings, the NLRB extended the Final Rule's effective date to Feb. 26, 2024. The effective date was further extended by the Eastern District of Texas to March 11, 2024, pending the outcome of litigation over the lawfulness of the Rule.

#### District Court's Summary Judgment Decision Striking Down Final Rule

After rejecting the NLRB's argument that Eastern District of Texas lacked jurisdiction over the proceeding, the Texas court criticized the two-part test set out in the Board's Final Rule for determining joint employer status, which holds that an entity is a joint employer if it (i) qualifies as a common-law employer of the disputed employees and (ii) if the entity qualifies as a common-law employer, then it must also have control over one or more essential terms and conditions of employment. The court agreed with the Chamber's argument that the second test is necessarily met where an entity satisfies the first test, meaning the standard has only one step for practical purposes.

The court then addressed a second section of the Final Rule that stated an entity qualifies as a joint employer where it "possess[es] the authority to control one or more essential terms and conditions

of employment . . . , regardless of whether control is exercised.” The court pointed out that such language would “treat virtually every entity that contracts for labor as a joint employer because virtually every contract for third-party labor has terms that impact, at least indirectly, at least one of the specified ‘essential terms and conditions of employment.’” As a result, the court reasoned that such a rule “exceeds the bounds of the common law and is thus contrary to law.”

The district court granted the Chamber’s motion for summary judgment and stated it would issue a final judgment vacating the Final Rule.

### **Key Takeaways**

While the Eastern District of Texas’ decision presumably pushes any effective date beyond March 11, 2024, it is unlikely that the court’s decision forecloses all future litigation over the legality of the Board’s Final Rule. The NLRB may choose to appeal the district court’s decision to the Fifth Circuit Court of Appeals. Further, the SEIU’s petition remains pending in the D.C. Circuit Court of Appeals.

We will continue to monitor developments regarding the Board’s Final Rule and provide updates in the future.

If you have any questions about the Board’s Final Rule or any other information contained in this memo, please contact [Sam Brewster](#), any attorney in Bond’s [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

