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NLRB Issues Notice of Proposed Rulemaking on Joint-Employer Standard

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Today, the National Labor Relations Board released a [Notice of Proposed Rulemaking \(NPRM\)](#) addressing the standard for determining joint-employer status under the National Labor Relations Act. The NPRM proposes to rescind and replace the joint-employer rule that took effect on April 27, 2020. The proposed changes are intended to explicitly ground the joint-employer standard in established common-law agency principles, consistent with Board precedent and guidance that the Board has received from the U.S. Court of Appeals for the DC Circuit.

Under the proposed rule, two or more employers would be considered joint employers if they “share or codetermine those matters governing employees’ essential terms and conditions of employment,” such as wages, benefits and other compensation, work and scheduling, hiring and discharge, discipline, workplace health and safety, supervision, assignment, and work rules. The Board proposes to consider both direct evidence of control and evidence of reserved and/or indirect control over these essential terms and conditions of employment when analyzing joint-employer status.

“In an economy where employment relationships are increasingly complex, the Board must ensure that its legal rules for deciding which employers should engage in collective bargaining serve the goals of the National Labor Relations Act,” said Chairman Lauren McFerran. “Part of that task is providing a clear standard for defining joint employment that is consistent with controlling law. Unfortunately, the Board’s joint employer standard has been subject to a great deal of uncertainty and litigation in recent years. Rulemaking on this issue allows for valuable input from members of the public that will help the Board in its effort to bring clarity and certainty to these significant questions.”

Chairman McFerran was joined by Board Members Gwynne A. Wilcox and David M. Prouty in proposing the new joint-employer standard. Board Members Marvin E. Kaplan and John F. Ring dissented.

Public comments are invited on all aspects of the proposed rule and should be submitted either electronically to [regulations.gov](https://www.regulations.gov), or by mail or hand-delivery to Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570-0001.

Comments on this proposed rule must be received by the NLRB on or before November 7, 2022. Comments replying to comments submitted during the initial comment period must be received by the Board on or before November 21, 2022.

Established in 1935, the National Labor Relations Board is an independent federal agency that protects employees from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.

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