

## NLRB Joint-Employer Rule Effective April 27, 2020

By Courtney M. Malveaux, Richard F. Vitarelli and Adam C. Doerr

March 31, 2020

The National Labor Relations Board's (NLRB) final rule governing determination of joint-employer status under the National Labor Relations Act (NLRA), restoring the standard that was applied for several decades, will become effective April 27, 2020.

In 2015, in *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186, the NLRB significantly broadened the "joint employer" doctrine used to hold an otherwise completely separate entity jointly responsible for another contractor's or subcontractor's labor law obligations with respect to the other contractor's employees.

For the 30 years before *Browning-Ferris*, the joint-employer doctrine applied only "when one company exerts sufficient control, which is both direct and immediate, and neither limited nor routine in nature, over another company's workers' terms and conditions of employment." That test protected employers who exerted only limited and direct control commonly found in contractor-subcontractor relationships from unsuspected liability for the other company's labor law violations.

The *Browning-Ferris* standard may have exposed a broader range of construction firms and contractors to labor law violations as a "joint employer." According to a February 1, 2019, Bloomberg Law article, the U.S. Chamber of Commerce and International Franchise Association found a nearly 57-percent increase in the number of joint employer charges or petitions filed following the *Browning-Ferris* decision.

The "direct and immediate control" standard under the final rule provides contractors much-needed clarity with respect to their legal obligations in these ever-uncertain times. Under the final rule, to be found a joint employer, a business must possess and exercise substantial, direct and immediate control over at least one essential term and condition of employment of another employer's employees. These essential terms and conditions of employment are:

1. Wages
2. Benefits
3. Hours of work
4. Hiring
5. Discharge
6. Discipline
7. Supervision
8. Direction

Jackson Lewis attorneys are available to discuss any questions employer may have about the final rule, labor relations, or the NLRB.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

### Meet the Authors



Courtney M. Malveaux

Principal  
Richmond 804-212-2862  
Email



Richard F. Vitarelli

Principal  
Hartford 860-522-0404  
Email



Adam C. Doerr

Associate  
St. Louis 314-827-3945  
Email

---

©2020 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

\*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.