

NLRB Extends Effective Date of New Joint-Employer Rule Amidst Legal Challenges

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In the wake of challenges to the NLRB's new joint-employer rule, the NLRB extended the effective date of the new rule from December 26, 2023, to February 26, 2024. As we previously [reported](#), the rule expands the scope of the joint employer standard to encompass relationships where a company holds indirect and unexercised control over the terms and conditions of another company's employee.

What are the Challenges to the Rule?

There are three challenges to the rule. On November 6, 2023, the Service Employees International Union ("SEIU") filed a [petition](#) in the D.C. Circuit, seeking to further expand the scope of the new rule. Shortly after the SEIU filed, on November 9, 2023, the U.S. Chamber of Commerce and a coalition of business groups filed a [suit](#) in the Eastern District of Texas, asking the Court to block the rule. The business groups argue that the new rule violates both the common-law foundation of the joint-employer test and the National Labor Relations Act. The suit also alleges that the Biden-era NLRB violated the federal rulemaking process by replacing the current joint-employer rule without a good reason.

In addition to the pending litigation, on November 9, 2023, a bipartisan group of lawmakers introduced a resolution seeking to eliminate the new rule under the Congressional Review Act. Even if this resolution gains traction, President Biden is likely to veto the legislation if it reaches his desk.

What Should Employers Do?

While awaiting the effective date of this rule, employers should continue to examine their business structure to determine whether any agreements they have in place fall under the purview of the new rule, including outsourcing and staffing agency agreements. This examination is particularly important as status as a joint employer potentially gives a company a role at the bargaining table and subjects it to liability. Kelley Drye will provide an update if the NLRB alters the proposed new rule in light of these recent challenges.