



SCWA Legislative & Regulatory Update

November 27, 2023



Joint Employer Status Final Rule

The NLRB issued its final rule altering the standard for determining joint employer status under the NLRA. The rule replaces the Board's 2020 final rule, which had addressed the damaging standard adopted by the Obama-era Board in *Browning Ferris Industries (BFI)*. We're going through the rulemaking and will provide more details once processed.

The final rule appears to be very closely aligned with the Board's NPRM and represents a drastic expansion to joint employer status for purposes of the Act. Notably, the final rule explicitly states that either possessing the authority to control one or more essential terms and conditions of employment (regardless of whether it is exercised) OR exercising the power to control indirectly one or more essential terms and conditions of employment (regardless of whether the power is exercised directly) is sufficient to establish an entity's status as a joint employer.

This means that either indirect or reserved control may stand alone as basis for the finding of a joint employer relationship, and the existence of either – without regard to the extent of the reserved or indirect control – indicates joint employer status. This standard extends beyond the harmful policy adopted in *BFI* and as Member Kaplan notes in his dissent, the rule “is potentially even more catastrophic .. as well as more potentially harmful to our economy, that the Board's previous standard in *BFI*.”



Final Reminder to Submit Comments for Proposed Rule to Update the Executive, Administrative and Professional Regulations

As a final reminder, the Federal Register published the U.S. Department of Labor's Notice of Proposed Rulemaking to Define and Delimit the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

Despite the request for a time extension by several small business organizations, the public comment period for this proposal will end tomorrow on **November 7, 2023**.

Workers, employers, and other interested stakeholders are encouraged to provide comments on this proposal.

You can find instructions on how to comment on regulations.gov.

For more information on the Notice of Proposed Rulemaking, please visit dol.gov/OT, contact the Wage and Hour Division or call toll-free at 1-866-4US-WAGE (487-9243).

