

2026 LEADERS OF INFLUENCE IN HUMAN RESOURCES

Joint Employer Liability: What the DOL's New Standard Means for Workforce Strategies

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If your company uses staffing agencies, subcontractors, or franchise arrangements, a new federal proposal could reshape your liability exposure. On April 22, 2026, the U.S. Department of Labor (DOL) published a proposed rule to establish a single, nationwide standard for determining when two or more entities qualify as joint employers, making them jointly responsible for wages, benefits, and employment protections under federal law.

The need for clarity is real. Since rescinding its prior regulation in 2021, the DOL has operated without any formal guidance on joint employment, leaving businesses to navigate a patchwork of standards that vary from one federal circuit to the next.

At the heart of the proposal is a four-factor test: Does the potential joint employer hire or fire workers? Supervise their schedules or working conditions? Set pay rates? Maintain employment records? When all four factors point in one direction, the DOL considers the outcome substantially likely. Notably, exercising control carries more weight than simply reserving the right to do so.

The proposal also includes important safe harbors. Franchising relationships, quality control standards, compliance requirements, and shared apprenticeship programs do not, standing alone, trigger joint employer status. However, a franchisor that exercises day-to-day control over a franchisee's workers could still cross the line.

The stakes are significant. Joint employers face joint and several liability for unpaid wages and overtime under the Fair Labor Standards Act (FLSA), coverage obligations under the Family and Medical Leave Act (FMLA), and full employment protections under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

For California employers, the federal rule is only part of the picture. California's broader framework can establish joint employment based on any one of three independent tests, including simply "suffering or permitting" work. Labor Code Section 2810.3 also imposes shared liability on businesses that obtain workers through staffing agencies for work within their usual course of business, regardless of control. A staffing arrangement that clears the DOL's test may still create significant exposure under state law.

"A staffing arrangement that clears the DOL's test may still create significant exposure under California law."

The bottom line: If your business relies on staffing agencies, independent contractors, franchise structures, or subcontractor relationships, now is the time to review those arrangements. Scrutinize your agreements for reserved authority over hiring, scheduling, or pay. For California operations, assess whether workers perform labor within your usual course of business. The regulatory landscape is shifting, and preparation is the best defense.



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