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Clearance: NLRB Member Cleared By Ethics Officer To Participate In Joint Employer Rulemaking

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Earlier this year, the National Labor Relations Board's (NLRB) Inspector General [issued a report](#) concluding that [current board Member William Emanuel](#) should have recused himself from a significant decision at the end of 2017 involving joint employment under the National Labor Relations Act (NLRA) based on an alleged conflict of interest. As a result of that report, the [2017 decision was vacated](#). Since that time, the [NLRB has announced](#) it plans to tackle the joint employment issue via its rulemaking authority, but questions have loomed whether Member Emanuel would be permitted to participate in that process.

We now seem to have an answer to those questions. [Bloomberg Law is reporting that](#) Member Emanuel has been cleared to participate in the process. According to the report:

"Embattled National Labor Relations Board Member William Emanuel (R) has been cleared to participate in drafting a closely watched new 'joint employer' regulation over concerns about his former law firm's ties to the issue, the board's chairman told Bloomberg Law Nov. 9. The agency's ethics officer concluded that Emanuel doesn't have to sit out the board's move to issue a new regulation on franchiser and staffing company liability, Chairman John Ring (R) said. . . . The clearance of Emanuel marks a step forward in the board's efforts to resolve ethics questions that have dogged it since shortly after President Donald Trump was inaugurated. Those questions stem largely

from Emanuel's—and to a lesser extent Ring's—work at huge management-side labor law firms before joining the board.”

Accordingly, the rulemaking process on joint-employment should be [moving forward as scheduled](#) and we will likely see the final rule sometime next year.

A finding of joint employment under the NLRA on two or more companies with respect to a workforce can have significant consequences, such as shared liability for unfair labor practices as well as collective bargaining obligations. The issue is especially pertinent to businesses who use staffing companies as well as those utilizing franchise models. Stay tuned to see how this issue continues to unfold.