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NLRB Releases Draft Joint Employer Rule Rolling Back Browning-Ferris

September 14, 2018 | | National Labor Relations Board,Labor And Employment

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Yesterday, the NLRB released its long-awaited draft rule that would roll back its controversial *Browning-Ferris* decision, which established a much looser test for determining when two companies are joint employers of a group of employees.

Since 2015, that ruling has been the bane of many employers' existences. Many have argued that the *Browning-Ferris* joint employer standard has made it much more difficult to determine whether employers are joint employers, especially in temporary employee and franchisee-franchisor relationships. The current *Browning-Ferris* standard requires that for an employer to be considered a joint employer of another company's workers, it must possess the authority to exercise indirect control over the other company's employees.

The Board's new draft rule would do away with that standard, and require that the potential joint employer must "possess[] and exercise[] substantial, direct, and immediate control" over those workers. The new draft rule was submitted over the dissent of Democratic board member Lauren McFerran, who joined the majority in *Browning-Ferris* and said that she sees no reason to revise it.

The Board's draft joint employer rule is not yet final. It is now open for comment from the public. After the comment period closes, the Board will consider the public's input and adjust the draft rule if it sees fit based on the comments it receives. In the meantime, employers will hold their collective

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breaths as we await the completion of the rulemaking process and publication of a new joint employer rule.