

Browning-Ferris Joint Employer Test Argued Before D.C. Circuit

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Oral argument was heard on Thursday, March 9 before the D.C. Circuit Court of Appeals in Browning-Ferris' continued effort to overturn the NLRB's new Joint Employer test. According to published reports, the tone of the questioning from the three-judge panel should give some hope to employers rooting for a reversal of the Board's broad new test. Judge Patricia Millett, according to the [National Law Journal](#), "dominated most the argument time of both sides." At one point, Judge Millett told the Board's attorney that the NLRB "dropped the ball" with its ruling by failing to establish the weight that would be applied to the various reserved control factors. The Board used the Browning-Ferris case to revise and broaden its 30-year-old joint-employer test. Under the Board's new standard, a two-part test will be used in which "control" can be found through either direct or indirect control. But in addition, the mere reservation of a right to control the temporary staffing employees may be enough under the test to find a joint employer relationship. For more on the subject, here are [links to our previous reports](#) on the Browning-Ferris case.

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