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Compliance Connection

September 2022

Federal Compliance Update

NLRB Proposes Rule on Standard for Determining Joint-employer Status

The National Labor Relations Board (NLRB) recently [issued](#) a notice of proposed rulemaking on the standard for determining joint-employer status under the National Labor Relations Act (NLRA), replacing the final rule that took effect on April 27, 2020. Employers would be considered joint employers if they “share or codetermine those matters governing employees’ essential terms and conditions of employment,” including scheduling, wages and benefits.

According to the proposed rule, the changes are designed to explicitly ground the joint-employer standard in established common-law agency principles. They would also provide relevant guidance to parties covered by the NLRA regarding their rights and responsibilities when more than one statutory employer possesses the authority to control or exercises the power to control employees’ essential terms and conditions of employment. Joint employers share liability for unfair labor practices and responsibility for bargaining with the union. Expanding the joint-employer standard could have major consequences in the franchising industry and for organizations sourcing workers through contracts, temporary staffing agencies and other business-to-business arrangements. The proposed rule reflects the NLRA’s aims to promote collective bargaining and stabilize labor relations by easing organizing and collective bargaining for staffing, franchise, and other workers with ties to multiple employers.

“In an economy where employment relationships are increasingly complex, the Board must ensure that its legal rules for deciding which employers should engage in collective bargaining serve the goals of the National Labor Relations Act.” -NLRB Chair Lauren McFerran

What’s Next?

On September 7, 2022, the NLRB formally published the proposed rule in the Federal Register. Public comments regarding the proposed rule must be received by the board on or before November 7, 2022. Subsequently, the NLRB will review comments and determine whether to move forward with a final rule.

Federal Agencies Issue Toolkit on Labor Partnership and Worker Organizing

As part of the Biden administration’s efforts to promote unions, the U.S. Small Business Administration (SBA)—together with the U.S. Department of Labor (DOL), the National Labor Relations Board (NLRB) and the U.S. Federal Mediation and Conciliation Services (FMCS)—recently released an online [toolkit](#) to aid employers in responding to employee interest informing or joining unions. Developed through collaboration across federal agencies, the toolkit executes the Biden administration’s goal of promoting and supporting unionization and collective bargaining.

The toolkit is directed toward small businesses and appears to highlight the mutual benefits of labor-management partnerships and collective bargaining to employers and workers. It’s presented as an FAQ on the SBA’s website and provides access to DOL, NLRB and FMCS guidance on federal labor and collective bargaining laws.

The toolkit builds on the administration's recent efforts intended to strengthen workers' ability to organize, including President Joe Biden's April 2021 [executive order](#) establishing the White House Task Force on Worker Organizing and Empowerment and the NLRB's notice of proposed rule-making on the standard for determining joint-employer status under the National Labor Relations Act.

"SBA's toolkit is an invaluable resource for employers looking for information and guidance on unions and the value of collective bargaining. Worker interest in forming unions is higher than we've seen in decades, and this resource will be an important tool in helping employers respond positively to worker organizing campaigns." -Secretary of Labor Marty Walsh

Employer Takeaways

There are currently around 16 million workers in the United States who are union members or in a job that provides union representation, according to the Bureau of Labor Statistics. Still, employee interest in unionizing is currently extremely high. According to an August 2022 Job case report, 70% of skilled and hourly U.S. workers said they would consider joining a union if given the opportunity for higher pay, improved employee benefits and better job protections. Additionally, the number of union petitions filed in the first nine months of fiscal year 2022 has increased by 58%, according to the NLRB.

State Compliance Update

Nothing to report...

Compliance Calendar

October

10/14 – Medicare Part D Creditable/Non-creditable Coverage Notice

10/30 – Form 941 Filing Deadline (third quarter)

November

Nothing to report...

December

Nothing to report...

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