

LEGAL UPDATE

DOL Rescinds 2020 Rule on FLSA Joint Employer Determinations

On July 29, 2021, the U.S. Department of Labor (DOL) [announced](#) that it is rescinding its 2020 Joint Employer Determination Rule (the 2020 Rule), **effective Sept. 28, 2021**. The DOL had previously proposed rescinding the rule in March 2021.

Joint employment or co-employment situations arise when two or more organizations share the control and supervision of one or more employees. Joint employers are equally and individually responsible for compliance with labor and employment laws, including the Fair Labor Standards Act (FLSA).

The DOL makes joint employment determinations to prevent scenarios where one employer uses another as a “shield” to avoid compliance obligations.

Rescinding the 2020 Rule

According to the DOL, rescinding the 2020 Rule was necessary because its tests for joint employment contradict longstanding agency interpretations and court rulings. For example, while the 2020 Rule requires using a 4-part test that focuses on an employer’s exercise of control, “all courts consistently use a totality-of-the-circumstances economic realities approach to determine the scope of joint employment under the FLSA,” according to the DOL.

The DOL also considered the fact that a federal court had already vacated most of the 2020 Rule in September 2020. In that case, the court held that the rule deviated from prior guidance without explaining why.

Impact on Employers

Employers should continue to comply with the 2020 Rule until its rescission takes effect on Sept. 28, 2021. After that date, employers should look to agency guidance and court rulings for direction on using the totality of circumstances to determine joint employment status under the FLSA.

Important Dates

March 16, 2020

The DOL’s 2020 joint employer rule became effective.

Sept. 8, 2020

A federal court vacated part of the 2020 joint employer rule.

March 11, 2021

The DOL proposed rescinding the entire 2020 joint employer rule.

July 29, 2021

The DOL rescinded the entire 2020 joint employer rule.

Sept. 28, 2021

The DOL’s rescission takes effect.

The 2020 Rule’s “impermissibly narrow” tests for joint employment are rescinded in favor of a totality-of-the-circumstances approach.

Provided to you by [TechServe Alliance](#)

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