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NLRB Issues New Rule on the Joint Employer Test

On Tuesday, February 24, 2020, the National Labor Relations Board (the "NLRB" or "Board") revealed its final rule concerning the legal standard used to evaluate whether workers are jointly employed by affiliated businesses. This new version of the standard, developed through notice and comment rulemaking, is narrower and less inclusive than the Obama-era standard adopted by the Board in *Browning Ferris Industries* ("BFI") in 2015. Under the previous BFI standard, a business could be deemed a joint employer if it exhibited indirect control over a contractor or franchisee, or reserved the ability to exert such control.

The New Joint Employer Standard

Under the new standard, a business is only a joint employer if it has substantial direct and immediate control over another company's workers. More specifically, a business must have substantial direct control of a least one key term or condition of a worker's job such that the business meaningfully affects matters pertaining to the employment relationship. For the purpose of this rule, the Board defines substantial direct and immediate control as having a regular or continuous consequential effect on an essential term or condition of employment. Direct or immediate control that is sporadic isolated, or *de minimis* is not substantial under this definition. This new rule and the resulting joint employer standard will take effect on April 27, 2020.

If you have any questions about the final rule or would like additional information, please contact Daniel J. LaRose or any of our other attorneys at (212) 758-7600.