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Labor and Employment

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Board's Decision Revises Joint-Employer Status Test

On August 27, 2015, the National Labor Relations Board (Board) issued a split decision (3-2) that drastically changes the test for determining whether an entity is considered a "joint employer" for purposes of collective bargaining. *Browning-Ferris Industries of California Inc.*, 362 NLRB No. 186.

Overturing prior precedent, the Board held that Browning-Ferris Industries (BFI) was a joint employer of cleaning, sorting, and housekeeping workers at its California facility, even though a subcontractor, Leadpoint, hired and supervised those employees. In doing so, the Board revised the test for determining whether a company is a "joint employer." It set forth a new, two-part test that examines (1) whether a common law employment relationship exists with the employees at issue and (2) whether the putative joint employer possesses sufficient control over the employees' essential terms and conditions of employment to permit meaningful collective bargaining.

The Board stated that it will no longer require that joint employers possess *and* exercise authority to control employees' terms and conditions of employment; rather, reserved authority to control these factors will be sufficient to find that an entity is a joint employer. The Board also stated that it will no longer require that the employer's control be "direct and immediate," meaning that if a putative employer exercises otherwise sufficient control indirectly, such as through an intermediary, the Board will find joint-employer status.

The *Browning-Ferris* decision may have significant implications, particularly for large chain corporations that operate under a franchise model as well as for companies that contract certain services or use temporary agencies. Under the Board's new standard, these companies may be obligated to bargain with the employees of these subcontractors and may also be liable for violations of labor law by subcontractors.

For more information or if you have questions about how the issues raised in this alert affect your policies and practices, please contact one of the following members of our [Labor, Employment, Benefits + Immigration Group](#):

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