

One Way Or Another: Trump NLRB Coming At Joint-Employer Standard From New Angle

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President Trump's newly constituted National Labor Relations Board (NLRB) made waves at the end of last year when it issued a slew of [significant decisions](#), including one that overturned an Obama NLRB decision that relaxed the standard for finding "joint-employment" status between two or more companies. Many employers celebrated the overturning of the Obama board joint-employer decision, but that celebration was short lived because the NLRB's inspector general issued a report earlier this year finding that one of the board members who participated in the decision may have had a conflict of interest related to the case. That report caused the agency to roll back the decision and [reinstitute](#) the Obama-era joint-employer standard. Good news for employers: NLRB Chairman John Ring [recently announced](#) that the agency is considering rulemaking to modify the standard the board uses when evaluating whether joint-employment exists. In the press release, Ring states: "Whether one business is the joint employer of another business's employees is one of the most critical issues in labor law today ... The current uncertainty over the standard to be applied in determining joint-employer status under the Act undermines employers' willingness to create jobs and expand business opportunities. In my view, notice-and-comment rulemaking offers the best vehicle to fully consider all views on what the standard ought to be. I am committed to working with my colleagues to issue a proposed rule as soon as possible, and I look forward to hearing from all interested parties on this important issue that affects millions of Americans in virtually every sector of the economy." The NLRB historically has preferred setting U.S. labor policy through adjudication of specific cases versus through the rulemaking process, but the Obama board broke from that practice in 2015 when it issued its infamous "[ambush election rule](#)." It appears the Trump NLRB will be altering the agency's standard for imposing joint-employment soon - one way or another. Stay tuned.

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