

## **On Oct. 5, 2021 The 2020 Joint Employer Rule Will Be Removed In Its Entirety**

On July 29, 2021, the U.S. Department of Labor (DOL) [announced](#) that it is rescinding its 2020 Joint Employer Determination Rule (the Rule), effective Sept. 28, 2021. On Sept. 20, the DOL [extended](#) this date to Oct. 5, 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 Rule is necessary because the Rule “improperly narrows the test for vertical joint employment and conflicts with decades of DOL interpretation, the text of the FLSA and Congressional intent.”

The DOL also considered the fact that in September 2020, a federal court vacated most of the Rule. In that case, the court (1) held that the Rule deviated from prior guidance without explaining why and (2) found that the Rule unlawfully limited test factors by focusing on a control-based test to the exclusion of economic dependence and overlooking the totality-of-the-circumstances economic realities standard that has generally been used by the courts.

### **Impact on Employers**

Employers should continue to comply with the parts of the 2020 Rule that remain in effect until Oct. 5, 2021. After this date, the 2020 Rule will be removed in its entirety, leaving room for previous joint determination guidance to apply.