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HR BRIEF

Provided by Baldwin Krystyn Sherman Partners

DOL Adopts New Joint Employer Determination Test

The U.S. Department of Labor (DOL) recently [announced](#) a new four-factor balancing test to determine whether two or more organizations should be considered “joint employers” under the Fair Labor Standards Act (FLSA). The [final rule](#) establishing the new test becomes **effective March 16, 2020**.

Joint employment, or co-employment, situations arise when two or more organizations share the control and supervision of one or more employees.

The DOL holds joint employers equally and individually responsible for compliance with labor and employment laws. The DOL looks at joint employment situations to prevent scenarios where one organization avoids complying with labor standards by using another employer as a “shield.”

The New Test

The final rule requires the DOL to examine whether a potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
- Determines the employee’s rate and method of payment; and
- Maintains the employee’s employment records.

Please note that this final rule and new test apply only to joint employment status for FLSA compliance and do not address joint employment status under other federal employment laws.

Speak with Baldwin Krystyn Sherman Partners to learn more about these and other employer responsibilities.

DOL Increases Civil Penalty Amounts for 2020

The DOL recently [released](#) its 2020 inflation-adjusted civil monetary penalties that may be assessed on employers for violations of a wide range of federal laws, including:

- The **FLSA**;
- The Employee Retirement Income Security Act (**ERISA**);
- The Family and Medical Leave Act (**FMLA**); and
- The Occupational Safety and Health Act (**OSH Act**).

To maintain their deterrent effect, the DOL is required to adjust these penalties for inflation, no later than Jan. 15 of each year. Key penalty increases include the following:

- The maximum penalty for violations of federal **minimum wage or overtime requirements** increases from \$2,014 to \$2,050 per violation.

- The maximum penalty for failing to file a **Form 5500** for an employee benefit plan increases from \$2,194 to \$2,233 per day.
- The maximum penalty for violations of the **poster requirement under the FMLA** increases from \$173 to \$176 per each offense.

Employers should become familiar with the new penalty amounts and review their pay practices, benefit plan administration and safety protocols to ensure compliance with federal requirements.

Contact Baldwin Krystyn Sherman Partners to learn more.