



Construction Industry Round Table

Regulatory News

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09/21/2018 – NLRB Proposes New Rule to Clarify Joint-Employer Standard

The National Labor Relations Board announced this week it intends to revisit its test for determining whether two employers are considered “joint employers” and are both liable under the National Labor Relations Act. The Obama-era NLRB created an uncertain legal minefield regarding the “joint employer” standard when it expanded the interpretation of this long-standing rule in 2015. As a result, this matter has become a source of some confusion and concern particularly among franchises, contractors (like constructors who may have multiple subs on projects along with the general’s employees), and other businesses. [The full proposal with a comprehensive legal analysis can be found in the Federal Register at: 83 FR 46681 (Sept. 14, 2018)].

Under the proposed revision: to be considered a “joint employer” within the new NLRB rule, an employer *must possess and actually exercise substantial direct and immediate control* over the essential terms and conditions of employment such as hiring, firing, discipline, supervision and direction. Three years ago, the NLRB adopted a more expansive definition of joint employer that did not require direct control of an employee to be considered a joint employer.

CIRT Members interested in commenting or supporting the changes regarding the proposed rule must be received by the Board **on or before November 13, 2018**. The comments may be submitted through <http://www.regulations.gov>. When submitting comments include the following reference numbers with your correspondence: **RIN 3142-AA13; and Doc’t No. 2018-19930**. All comments will be part of the public record on this matter.