



Department of Labor rescinds FLSA joint-employer rule

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On July 29, 2021, the Department of Labor (DOL) rescinded the Fair Labor Standards Act (FLSA) joint-employer standard rule issued by the Trump administration and effective in March 2020.

Under the FLSA, employers are generally required to pay their nonexempt employees — those eligible for overtime pay — at least the federal minimum wage for all hours worked, plus overtime for all hours worked over 40 in a workweek. When an employee has more than one employer and those employers are considered joint employers under the FLSA, they are “jointly and severally” liable for the employee’s wages.

In March 2021, the DOL proposed to rescind the 2020 rule, which required a new four-factor balancing test that focused on the employer’s actual — not theoretical — control over an employee’s terms and conditions of work. This rule was largely the same as the proposed rule issued in April 2019 and came two and a half years after the agency rescinded informal guidance on joint employment issued during the Obama administration. This had been the first meaningful revision of the joint-employer rule since 1958.

The DOL says rescission of the rule, effective on Sept. 28, 2021, “will ensure more workers receive the minimum wages and overtime protections of the Fair Labor Standards Act” and noted that the 2020 rule had included a description of joint employment contrary to statutory language and Congressional intent. In addition, the rule had failed to take prior guidance into account, and a New York District Court had already vacated most of the rule in 2020.

For now, the DOL’s Wage and Hour Division said they “will continue to follow the law and judicial precedent when evaluating joint-employer relationships to enforce worker protections.” It is unclear at this point whether further guidance will be issued.

Related resources

Non-Mercer resources

- [Final rule](#) (Federal Register, July 30, 2021)
- [Press release](#) (DOL, July 30, 2021)

- [Proposed rule](#) (Federal Register, March 12, 2021)
- [Information on the joint employer rule](#) (Wage and Hour Division, Jan. 12, 2020)
- [Fair Labor Standards Act](#) (Department of Labor, May 2011)

Mercer Law & Policy resource

- [US: DOL rule narrows joint employer standard](#) (updated) (March 11, 2019)

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