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NLRB delays effective date of “joint employer” regs until late February

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The National Labor Relations Board announced Thursday that it was [delaying the effective date of its new joint employer regulations](#) from the original December 26 (end of next month) to February 26, 2024. The Board asserts that the date was extended “to facilitate resolution of legal challenges with respect to the rule.” According to the Board announcement, a notice of the extension will soon be published in the *Federal Register*.

The back story of the Board’s announcement is that [the new regulations](#) promptly generated “pushback” from U.S. Senators and members of the House of Representatives, as well as litigation from both organized labor and employer groups. As the “pushback” ensued, the U.S. Government Accountability Office reviewed the issue. On November 9, [the GAO concluded that the Board violated the Congressional Review Act](#) by promulgating the regulations with less than 60 days’ notice to the Senate.

The Congressional Review Act says that a major regulation cannot take effect until 60 days after its publication in the *Federal Register* or receipt by Congress, whichever occurs later. The joint employer regulations were published in the *Federal Register* on October 27, but the Senate did not receive the regulations until October 30, less than 60 days before the original effective date of December 26. Thus, regulations did not have the required 60-day delay before their effective date.

Litigation challenging the joint employer regulations is pending in two courts: a federal District Court in Texas, and the U.S. Court of Appeals for the District of Columbia Circuit. The challenges are based on the substance of the regulations and each court’s subject matter jurisdiction over the issues raised. Some commentators have said that the U.S. Supreme Court may have to resolve some of these issues.

Whether the regulations take effect on February 26 remains to be seen. A court could enjoin the regulations from taking effect. In the meantime, however, employers should know that the current NLRB majority views joint employment expansively. Even without new regulations, the Board is likely to interpret the National Labor Relations Act to find joint employment whenever it can, so as to have as many employers as possible responsible for unfair labor practices and obligated to bargain with organized labor.



LEGAL BULLETIN

November 20, 2023



Legal Bulletin #1063

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