

Advocacy Recommends that the NLRB Reassess the Compliance Costs of Joint Employer Rule for Small Business

On September 7, 2022, the National Labor Relations Board (the Board) proposed a rule that would expand the joint-employer definition under the National Labor Relations Act. This expansion extends liability to employers that have indirect and reserved control over one or more of employees' essential terms and conditions of employment. The proposed rule rescinds a 2020 final rule on the joint-employer standard, which required only substantial direct and immediate control over one or more of these essential terms. On November 29, 2022, the Office of Advocacy (Advocacy) filed a comment letter to the Board on this proposed rule.

Advocacy made the following recommendations:

- Advocacy encourages the Board to reassess the compliance costs of this regulation. In addition, the Board should consider significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts to small entities as required by the Regulatory Flexibility Act. Advocacy recommends that the Board publish a supplemental Initial Regulatory Flexibility Analysis, allowing additional time for public comment.
- Advocacy recommends that the Board limit and clarify what degree of indirect or reserved control of one or more terms and conditions of employment is sufficient to trigger joint-employment status. The Board should provide guidance to contracting parties regarding which terms are routine contracting terms and which terms are essential to permit meaningful collective bargaining. Additionally, the Board should remove the provision that allows any contract term to be included in the list of terms subject to liability.
- Advocacy recommends that the Board resolve any conflicts with existing Federal requirements and mandates. The Board should clarify that contract terms required by federal requirements be considered routine components of third-party contracts, and not essential terms subject to joint liability. Advocacy is concerned that this proposed rule would violate a new federal mandate to bolster the ranks of underserved small business owners in the federal marketplace. The Board should analyze the impact of the proposed rule on these underserved small business owners.

A complete copy of [Advocacy's letter to the Board](#) is available. For more information, please contact Janis Reyes at (202) 798-5798 or by email at Janis.Reyes@sba.gov.

