

Is Invalidation of the DOL's Joint Employer Rule Much Ado About Nothing?

"Much has been written in the past few weeks about a recent federal court decision that invalidated the U.S. Department of Labor's joint employment rule. While the immediate reaction of some may be to view this as a terrible decision for businesses that expands the potential for an entity that does not employ an individual to nonetheless be deemed that individual's joint employer, this reaction may overstate the decision's importance for putative joint employers," writes Louisa J. Johnson and Noah A. Finkel in *Seyfarth Shaw's Wage & Hour Litigation Blog*.

"The rule at issue is 29 C.F.R. § 791.2, which the DOL amended in January of this year, and which 18 states sought to enjoin through a lawsuit brought in the U.S. District Court for the Southern District of New York. The court invalidated the new rule with respect to 'vertical joint employment,' which refers to situations in which the employee has an employment relationship with one employer but a separate company also benefits simultaneously from the work of the employee, often through a contract with the direct-employing entity. The court reasoned that the DOL's new rule for vertical joint employment was essentially the same as the common law control test for joint employment. This purported similarity, the court said, was proof that the DOL's new test was impermissibly narrow because Congress intended the scope of employment under the FLSA to be very broad."

Read the article.