

June 22, 2026

Submitted via the Federal eRulemaking Portal at [Regulations.gov](https://www.regulations.gov)

Daniel Navarrete, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1235-AA48; Comments of the Center for Workplace Compliance in Response to the Proposed Rule on Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

Dear Mr. Navarrete:

The Center for Workplace Compliance (CWC) welcomes the opportunity to submit comments in response to the Department of Labor's (the Department's) Notice of Proposed Rulemaking on Joint Employer Status Under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), published in the Federal Register on April 23, 2026.¹

As explained below, the proposal provides a structured framework for determining joint employer status that reflects statutory text, Supreme Court precedent, and the core considerations applied by federal courts. By restoring regulatory guidance and introducing a more defined analytical approach, particularly for vertical joint employment, the proposal promotes predictability and administrability while supporting consistent application across the FLSA, FMLA, and MSPA. For these reasons, CWC strongly supports the proposal.

Statement of Interest

Founded in 1976, CWC is the nation's leading nonprofit association of employers dedicated exclusively to helping members understand and manage workplace compliance

¹ 91 Fed. Reg. 21,878 (April 23, 2026).

requirements and risk. CWC's membership includes U.S. employers from nearly every major industry sector and geographic region.

All CWC members are employers subject to the FLSA and the FMLA; a minority are agricultural employers subject to the MSPA. CWC's members therefore have a strong interest in regulations that are faithful to the statutory text, accessible to the regulated community, and attentive to the practical challenges of prospective compliance.

Executive Summary

CWC strongly supports the Department's proposal to restore regulatory guidance governing joint employer status under the FLSA and to align that framework across the FMLA and MSPA. Reestablishing a uniform regulatory standard will help address uncertainty in this area and assist employers in understanding and meeting their compliance obligations.

CWC supports the proposal's control-based framework for vertical joint employment. The proposed four-factor test reflects Supreme Court precedent and the core considerations applied by many federal courts.² By identifying the most relevant indicia of employer status and providing practical guidance, the proposal promotes predictability and consistency for regulated entities.

CWC also strongly supports provisions confirming that common business practices, including compliance-related contract terms, quality standards, and benefit or training arrangements, do not, standing alone, make joint employer status more or less likely. This guidance will help employers maintain lawful and beneficial business relationships without unwarranted litigation risk.

At the same time, several targeted refinements would further strengthen the proposal and enhance its practical utility. In particular, the Department should: (1) reinforce that the four core factors provide the principal basis for the analysis and should generally carry the greatest weight; (2) confirm that additional considerations, including those related to economic dependence, are secondary and should not be treated as determinative or overriding; and (3) better explain the distinction between actual control and contractual or theoretical authority to act.

² See, e.g., *Falk v. Brennan*, 414 U.S. 190 (1973); *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983), *abrogated on other grounds by Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

With these refinements, the final rule will provide an administrable framework that promotes consistent application and supports compliance across complex business arrangements. CWC appreciates the Department's efforts to provide meaningful regulatory guidance in this area and looks forward to continued engagement on this important issue.

Revised Guidance Is Needed To Clarify When a Joint Employment Relationship Exists

CWC supports the Department's decision to publish updated guidance addressing joint employer status. The absence of a current, nationwide framework has contributed to uncertainty for employers, workers, and the Department. Employers operating across multiple jurisdictions face particular challenges when courts apply differing standards to joint employer relationships.³

Vertical joint employment presents a particular need for updated guidance. Modern business arrangements, such as subcontracting, staffing, and similar relationships, regularly involve arrangements in which one entity benefits from work performed by another employer's employees. Without current regulatory guidance, these arrangements have been evaluated under inconsistent and sometimes expansive interpretations, making it more difficult for employers to assess their obligations with confidence.

CWC also supports the Department's decision to address joint employment through rulemaking and to codify its interpretations in the Code of Federal Regulations. Notice-and-comment rulemaking allows the Department to set out its interpretation in a public, structured format and gives regulated entities and courts a more stable point of reference than case-by-case guidance alone.

By restoring and codifying guidance in this area, particularly with respect to vertical joint employment, the Department can reduce uncertainty and provide employers with a more reliable framework for structuring and managing common business relationships.

For these reasons, CWC strongly supports the proposal and offers the following comments on specific provisions.

³ For example, one federal district court surveying the different joint employment analyses employed by courts described a "dizzying world of multi-factor tests". *Harris v. Med. Transp. Mgmt., Inc.*, 300 F. Supp. 3d 234, 241-45 (D.D.C. 2018). Its summary of the different tests illustrates the challenge multi-district employers face in making classification decisions.

Introductory Statement (Proposed § 791.100)

Proposed § 791.100 describes the purpose and effect of the guidance. By confirming that Part 791 is intended to guide enforcement and may be relied upon by employers consistent with the Portal-to-Portal Act, this provision provides valuable assurance to the regulated community. Inclusion of this statement in the regulatory text helps employers understand the guidance's scope and how it may inform compliance decisions.

General Principles (Proposed § 791.105)

Proposed § 791.105 explains the general principles of joint employment under the FLSA, including that joint employment exists only where two or more separate entities share responsibility for an employee and that multiple employment relationships do not, by themselves, establish joint employment. This section also distinguishes the joint employment relationship from entities that may, in fact, be separate and distinct employers. This provision provides a useful analytical starting point by helping employers identify when a joint employer analysis is warranted.

Two Scenarios of FLSA Joint Employment (Proposed § 791.110)

Proposed § 791.110 identifies and explains the two primary scenarios of joint employment under the FLSA. The first is vertical joint employment, where multiple entities benefit from the same work. The second is horizontal joint employment, where an employee works separate hours for related employers. By distinguishing between these scenarios and explaining the consequences of joint employment, including joint and several liability, this framework enables employers to more readily identify when and how the standard applies in practice.

Determining Vertical Joint Employment (Proposed § 791.115)

Proposed § 791.115 establishes the Department's framework for determining vertical joint employment under the FLSA. It builds on the general principles described above and provides both core factors and additional guidance on their application.

Four Factors (Proposed § 791.115(a))

Proposed § 791.115(a) sets forth four core factors for determining whether a person or entity that benefits from an employee's work is also acting as the employee's employer. These factors are whether the putative joint employer:

1. hires or fires the employee;
2. supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
3. determines the employee's rate and method of payment; or
4. maintains the employee's employment records.

These factors focus the inquiry on the most relevant indicia of an employer's role in the employment relationship.

The Department should retain this structured, factor-based approach. The four factors reflect core considerations relied upon by courts⁴ and provide an administrable approach for evaluating vertical joint employment across a wide range of business arrangements. By centering the analysis on concrete aspects of control over the terms and conditions of employment, the proposal gives employers a practical means of assessing potential joint employment relationships when structuring staffing, subcontracting, or similar arrangements, rather than relying on less predictable, open-ended standards.

The phrase "to a substantial degree" in the second factor is also important. This formulation recognizes that supervision and control may exist along a spectrum and provides flexibility in applying the factor to varied factual circumstances, while still maintaining a meaningful threshold that distinguishes routine coordination or oversight from the level of control indicative of joint employment.

Finally, a defined set of core factors enhances consistency by focusing the analysis on common, observable features of the employment relationship. This approach should reduce variability across cases and provide a more stable foundation for both compliance and enforcement.

Employment Records (Proposed § 791.115(b))

Proposed § 791.115(b) defines "employment records" for purposes of the four-factor analysis and explains that maintaining such records, standing alone, is not sufficient to

⁴ See *Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 674-76 (1st Cir. 1998), *Gray v. Powers*, 673 F.3d 352, 355-57 (5th Cir. 2012), *In re Enterprise Rent-A-Car Wage & Hour Emp't Practices Litig.*, 683 F.3d 462, 469 (3d Cir. 2012) (quoting *Bonnette*, 704 F.2d at 1470).

establish joint employer status. This provision appropriately recognizes that routine recordkeeping, particularly for compliance, contractual, or administrative purposes, should not be treated as evidence of joint employment absent other indicia of employer control.

Reserved Control (Proposed § 791.115(c))

Proposed § 791.115(c) addresses the relevance of a potential joint employer's reserved authority to act with respect to an employee, while distinguishing between contractual rights and the actual exercise of control. CWC agrees that this distinction is important and appreciates the Department's guidance on how reserved authority should be evaluated.

CWC supported the approach taken in the 2020 rulemaking, under which joint employer status would turn primarily on the actual exercise of control.⁵ Although CWC continues to view that approach as administrable, we recognize that the Department's current formulation, under which reserved control may be considered but actual or exercised control is more probative, provides an acceptable framework for assessing joint employer status.

In applying this approach, however, CWC encourages the Department to emphasize that unexercised contractual rights should carry limited weight absent meaningful control over the terms and conditions of employment. That refinement would keep the inquiry focused on the economic reality of the relationship and reduce the risk that routine contractual provisions are treated as indicia of joint employment.

Indirect Control (Proposed § 791.115(d))

Proposed § 791.115(d) addresses the role of indirect control in the joint employer analysis, including circumstances in which a potential joint employer may exercise control through another entity. CWC supports the Department's effort to distinguish meaningful indirect control from requests, recommendations, or suggestions that another entity may adopt or decline.

This distinction recognizes that ordinary commercial relationships often involve coordination and communication between businesses without giving rise to joint employment. Providing that indirect control generally requires more than routine requests or recommendations will help ensure that common business interactions, such as setting performance expectations or coordinating work, are not mischaracterized as evidence of joint employment in the absence of authority or direction indicative of an employer role.

⁵ CWC's comments are available at <https://www.regulations.gov/comment/WHD-2019-0003-12778>.

Additional Factors (Proposed § 791.115(e))

Proposed § 791.115(e) explains that additional factors beyond the four core factors may be considered in assessing joint employer status and describes how such factors should be evaluated. CWC appreciates the Department's recognition that joint employer determinations must account for the "circumstances of the whole activity" and supports guidance on how additional considerations may be incorporated into the analysis.

At the same time, additional factors should not dilute the weight of the four-factor test. CWC therefore supports the proposal's statement that the four factors generally carry greater weight and that, when they point to a consistent outcome, other considerations are unlikely to alter the result.

With respect to economic dependence, CWC has previously supported an approach that excludes such considerations from the joint employer analysis.⁶ While CWC continues to view that approach as preferable, we recognize that the proposal permits consideration of economic dependence as a secondary factor. In this context, CWC encourages the Department to state that economic dependence should not be treated as determinative or overriding and should not displace the central focus on the putative joint employer's control over the terms and conditions of employment.

These refinements will keep the analysis anchored in the most relevant indicia of employer status while avoiding the uncertainty associated with broader, open-ended standards.

Factors That Are Not Relevant (Proposed § 791.115(f))

Proposed § 791.115(f) identifies certain factors that are relevant to determining independent contractor status but not to determining joint employer status, such as an employee's skill level, opportunity for profit or loss, and investment in equipment. CWC supports the exclusion of these factors from the joint employer analysis because they do not bear on whether a putative joint employer exercises control over the terms and conditions of employment.

Recognizing that these considerations are not relevant to the joint employer inquiry will maintain the distinction between employee classification and joint employment analyses. This distinction is important because it helps ensure that the joint employer framework remains focused on the relationship between the putative joint employer and the employee, rather than on characteristics of the worker or the worker's primary employer.

⁶ *Id.*

To further promote consistency, CWC encourages the Department to retain and, where appropriate, expand this guidance to ensure that factors traditionally associated with economic dependence or independent contractor status are not inadvertently incorporated into the joint employer analysis.

Examples (Proposed § 791.115(g))

CWC supports the inclusion of illustrative examples at § 791.115(g) demonstrating how the proposed vertical joint employment framework applies in practice. These examples provide concrete guidance that will assist employers, workers, and the Department in understanding how the four-factor test operates in common factual scenarios. Including examples in the regulatory text is particularly valuable in applying a multi-factor standard in practice.

Determining Horizontal Joint Employment (Proposed § 791.120)

CWC supports the Department's approach to horizontal joint employment at § 791.120, which largely reflects the longstanding framework previously applied under the Department's regulations.⁷ Maintaining this established standard, which focuses on the degree of association between employers, provides continuity for employers already familiar with the analysis. Retaining this approach will support consistent treatment of horizontal joint employment scenarios and avoid unnecessary disruption in an area where the existing framework has been generally well understood and applied.

Relevance of Certain Business Practices (Proposed § 791.125)

Proposed § 791.125 identifies categories of common business practices that do not make joint employer status more or less likely. These include a potential joint employer's business model, contractual provisions addressing legal compliance and workplace standards, quality control requirements, and certain collaborative or administrative practices.

This provision addresses a significant practical concern. Confirming that these practices are not, standing alone, indicia of joint employment will help ensure that employers are not discouraged from engaging in lawful and beneficial business relationships.

Common Contractual and Compliance Practices

CWC supports the Department's recognition that contractual provisions requiring compliance with legal obligations or workplace standards, such as wage requirements,

⁷ See 23 Fed. Reg. 5,905 (Aug. 5, 1958).

anti-harassment policies, and workplace safety measures, should not be treated as evidence of joint employment. Employers routinely include such provisions for legitimate reasons, including meeting regulatory obligations, managing operational risk, and promoting consistent workplace practices.

Treating these provisions as indicia of joint employment would create a strong disincentive for employers to implement policies designed to ensure compliance with applicable law or to improve working conditions. Recognizing that these practices are not relevant to the joint employer analysis allows employers to continue adopting and enforcing such provisions without incurring unwarranted liability risk.

Quality Control and Operational Standards

CWC also supports the Department's statement that imposing quality control requirements, production standards, or brand-related specifications does not, by itself, indicate joint employer status. These types of requirements are a standard feature of modern commercial relationships and are typically directed at the quality and consistency of the work product, not at the management of employees.

The rule should avoid conflating routine business oversight with the type of control over the terms and conditions of employment that is relevant to the joint employer inquiry.

Government-Mandated Contract Provisions

Federal contracting illustrates the practical importance of this guidance. In many cases, employers are required by law to include specific employment-related provisions in their contracts with subcontractors, including requirements relating to nondiscrimination, wage rates, leave policies, and other employee protections.⁸

These mandated provisions necessarily affect the terms and conditions of employment at the contractor level. Neither Congress nor the Executive Branch, however, has suggested that compliance with these requirements should give rise to joint employer liability. Recognizing that such provisions are not indicative of joint employment is important to ensure that employers can comply with federal requirements without creating unintended legal risk.

⁸ See, e.g., Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. § 793 (nondiscrimination), Service Contract Act, 41 U.S.C. §§ 6701-07 (wage rates), Executive Order 13706 (Sept. 7, 2015) (leave policies), and Executive Order 13496 (Feb. 4, 2009) (other employment provisions).

Voluntary Standards and Supply Chain Practices

Beyond mandatory requirements, employers frequently adopt additional contractual provisions to achieve legitimate business objectives, including promoting compliance with applicable laws, enhancing workplace standards, or advancing broader corporate policies. These provisions may include supplier codes of conduct, compensation standards, or anti-harassment policies that exceed minimum legal requirements.

Such practices can have significant benefits for workers and the broader economy. If these efforts are treated as indicia of joint employment, however, employers may be discouraged from adopting or enforcing them. The Department's proposed approach appropriately removes this disincentive and supports continued investment in these beneficial practices.

Administrative and Collaborative Practices

CWC further supports the proposed treatment of certain administrative or collaborative practices, such as providing sample employee handbooks, participating in association health or retirement plans, or jointly engaging in training or apprenticeship programs, which do not make joint employer status more or less likely.

These practices reflect efforts to share resources, improve compliance, and enhance workforce development, and they should not be treated as evidence of an employment relationship absent additional indicia of control.

Summary of Comments on Proposed § 791.125

Overall, proposed § 791.125 will help employers structure common business relationships without concern that routine or beneficial practices will be misread as evidence of joint employment. By distinguishing legitimate business arrangements from control relevant to the joint employer analysis, the proposal promotes compliance without unnecessary litigation risk.

Proposed Revisions to FMLA and MSPA Regulations

CWC supports the Department's proposal to align the joint employer standards under the FMLA and MSPA with the framework established in Part 791 for the FLSA. A uniform analytical approach is appropriate given the statutes' shared employment definitions and will promote consistency in compliance and enforcement. A single framework will also help employers apply joint employer principles across multiple legal requirements without navigating differing standards.

Mr. Daniel Navarrete

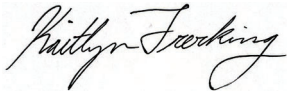
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Conclusion

CWC appreciates the Department's consideration of these comments. For the reasons discussed above, CWC strongly supports the proposal and encourages the Department to finalize it with the targeted refinements described in these comments. Please do not hesitate to contact me if CWC can be of further assistance as the Department considers these important matters.

Respectfully submitted,

A handwritten signature in black ink, reading "Kaitlyn Frerking". The signature is written in a cursive style with a large, looping "K" and "F".

Kaitlyn Frerking
Counsel