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[Are You a Joint Employer?](#)

Filed in [DOL](#), [Wage Enforcement](#) By [David Weil](#) on January 20, 2016 • [1 Comment](#)

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Protecting workers in [fissured workplaces](#) – where there is increasingly the possibility that more than one employer is benefiting from their work – has been a major focus for the Wage and Hour Division in recent years. The Wage and Hour Division has always examined employment relationships during its investigations into possible wage and other labor violations, and the agency considers joint employment in hundreds of investigations every year.

While we devote significant resources to enforcing labor standards in order to protect the rights of workers, we also have a commitment to engage with and educate employers so they know about their responsibilities and can operate in compliance with the laws that we are tasked to uphold. That's why today – consistent with that commitment – we've [issued guidance on joint employment](#) in the form of an administrator's interpretation.

What is joint employment?

In a nutshell, joint employment exists when a person is employed by two or more employers such that the employers are responsible, both individually and jointly, for compliance with a statute.

The [Fair Labor Standards Act](#) and the [Migrant and Seasonal Agricultural Worker Protection Act](#) share the same definition of employment. This definition, which includes “to suffer or permit to work,” was written to have as broad an application as possible. Under these laws, it is possible for a worker to be jointly employed by two or more employers who are both responsible, simultaneously, for compliance. It is a longstanding principle under both the FLSA and MSPA that an employee can have two or more employers for the work that he or she is performing.

Is the frequency of joint employment situations increasing?

Yes. Economic forces and technological advancements have been changing the nature of work for a long time. As a result, more and more businesses are changing their organizational and staffing models by, for instance, sharing employees or using third-party management

companies, independent contractors, staffing agencies or other labor providers. We often see these kinds of arrangements in the construction, agricultural, janitorial, distribution and logistics, staffing, and hospitality industries. The growing variety and number of business models and labor arrangements have made joint employment more common and our need to address it more pressing.

Last summer, for example, a federal court in Seattle sided with the department in ruling that [DirecTV](#) was a joint employer of the installers hired by its contractor, resulting in DirecTV paying \$395,000 in back wages and damages for minimum wage and overtime violations. And in October, we announced that [J&J Snack Foods Corp.](#) would pay \$2.1 million in back wages and damages to temporary production line workers hired by two staffing firms that J&J contracted with to provide labor.

Guidance to employers

As the fissured workplace continues to impact employment relationships, we will continue educating employers about their responsibilities. Last year, we provided guidance on the [misclassification](#) of employees as independent contractors. The administrator's interpretation that we issued today addresses who is an employer, pulling together relevant authorities – statutory provisions, regulations and case law – to provide comprehensive guidance on joint employment under the FLSA and MSPA. The administrator's interpretation reflects existing policy, and provides all stakeholders with clear guidance, including examples of how WHD considers joint employment in its enforcement of these laws.

Upholding a fair day's pay for a fair day's work

As the workplace continues to fissure, and as employment relationships continue to become more tenuous and murky, we will continue to identify where joint employment applies and to hold all employers responsible. This guidance provides the analysis that we at the Wage and Hour Division use to make that determination. For employers, it can serve as a road map to compliance so that labor violations can be prevented and workers will receive the hard-earned pay to which they are legally entitled.

Dr. David Weil is administrator of the department's Wage and Hour Division.

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1. [Matthew Capece](#) says:

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The construction industry is suffering from an epidemic of corrupt contractors using crooked subcontractors and labor brokers that cheat workers out of wages and don't pay taxes and overtime. And it happens on large construction projects, including military bases, universities, hospitals and skyscrapers. By cheating, corrupt contractors steal work from law-abiding employers and their employees. Responsible employers and their employees need protection, and this guidance on joint employment helps get us there. Contractors that respect the law and use law-abiding subcontractors have nothing to worry about with this guidance. Those that don't, should start thinking about changing their ways.

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