

Co-Employment Labor Pains; Persuader Rule Rescinded

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Co-Employment risks persist for McDonald's

In [2014](#), the National Labor Relations Board (NLRB) began a campaign to hold McDonald's USA, LLC liable for alleged unfair labor practices committed at restaurant locations owned by McDonald's franchisees. The NLRB took the position that corporate McDonald's controlled employment relations at franchise locations enough to qualify as a joint employer with the franchisee.

After extended and costly litigation and following the appointment of a new NLRB General Counsel by President Donald Trump, the General Counsel and McDonald's reached informal settlement agreements to resolve all of the cases involving McDonald's and the joint employer issue. The General Counsel and McDonald's submitted the agreements to Administrative Law Judge Lauren Esposito for approval in March 2018. The employees who filed the charges against McDonald's opposed the proposed settlements.

On July 17, 2018, ALJ Esposito rejected the proposed settlements. In short, the judge determined that the agreements were "inadequate and inconsistent with board policy and practice." ALJ Esposito ruled that the settlements did not guarantee an end to the litigation and that McDonald's obligations under the agreements were not sufficient (i.e., not severe enough for McDonald's).

While the parties will likely continue negotiations, this ruling should remind employers that simply having a business-friendly General Counsel at the NLRB does not guarantee favorable results for employers. Employers should continue to examine their current employment practices and policies to ensure compliance with

current law.

Persuader rule formally rescinded

On [July 18, 2018](#), the Department of Labor (DOL) published a notice in the Federal Register that officially rescinded the Obama-era DOL's interpretation of the "advice" exemption under the Labor-Management Reporting and Disclosure Act. The Obama-era interpretation would have required employers and their consultants, including attorneys, to report services related to convincing employees to not vote for a union. Although a [federal judge permanently blocked the "Persuader Rule"](#) from taking effect in 2016, the DOL's rescission officially takes the rule off the books.

The DOL appealed the 2016 national injunction, but it is unclear whether the DOL will continue to pursue that appeal in light of the rule's rescission. For employers, having the permanent injunction stand will prevent future administrations from rolling out a similar rule.

Please stay tuned for additional labor and employment insights and updates.

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