Recently the National Labor Relations Board (NLRB) released a final rule regarding joint employer status and it's going to make quite a stir.

In the past, two companies were considered joint employers only when both companies held **and exercised** the right to control employees. This didn't mean just management of employees, but also decisions on pay and benefits. Then there was a ruling that said that both companies didn't actually have to exercise control, they just had to have the right to potentially exercise control. A few years later it changed again to say that an employer must actually exercise control that is substantial, direct, and immediate.

Now, here we are again with another change. Bear in mind that the NLRB policies can change with every administration of the Board. The most recent ruling is once again very broad, and it need only be demonstrated that an organization has the right to exert control over terms and conditions of employment (whether exercised or unexercised, direct, or indirect).
One of the major concerns organizations have about this ruling is how it will impact unions and collective bargaining. Organizations may find themselves in collective bargain negotiations with unions they didn't realize they had.

What we identify as one of the biggest risks is organizations being in joint employment relationships and not recognizing it. If you have any of the following arrangements, you may very well be a joint employer:

- You use temporary employees from an agency. The employees are in your facility, and you are directing day to day work, but they are receiving pay and benefits from another organization. That is co-employment. Be sure to review your agreements regarding the language of co-employment and follow all staffing agency policies regarding exercising control over the employees (be especially mindful when communicating schedules and performance discipline).

- You are part of a Professional Employer Organization (PEO). When an organization is part of a PEO, employers are actually paid by and receive benefits through the PEO and the PEO is the employer of record. This makes your organization a joint employer with the PEO.

- You are a franchise. This one is tricky and really depends upon the agreement between the franchisor and franchisee, and the services one provides for the other. Be sure to read the agreements thoroughly to understand the employee relationship.

Another consideration on how a joint employer could be drawn into litigation is overtime pay. Let's suppose you hire employees through a temporary agency, and this agency is not paying those employees properly for overtime. As a joint employer for whom those employees are completing the work, you may also be held liable.

What do you need to do? Evaluate all the vendor and provider agreements that impact your employees. Be particularly aware of any employees who receive W2s or 1099s from another organization. You don't necessarily have to end these relationships but do understand the boundaries of the relationships and ensure that your managers know how to operate within them.

Not sure where to start? Let us know – we can help.