

Commercial Risk Advisor

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DOL Adopts New Joint Employer Determination Test

On Jan. 12, 2020, the U.S. Department of Labor (DOL) announced a new four-factor balancing test to determine whether two or more organizations should be considered “joint employers” under the Fair Labor Standards Act (FLSA). The [final rule](#) will go into effect March 16, 2020. To avoid violations, employers should:

- Become familiar with joint employment and the details of the final rule.
- Evaluate whether they are in a joint employment situation.
- Identify any potential areas of noncompliance.

Joint Employment

Joint employment or co-employment situations arise when two or more organizations share the control and supervision of one or more employees.

The DOL holds joint employers equally and individually responsible for compliance with labor and employment laws. The DOL looks at joint employment situations to prevent scenarios where one organization bypasses complying with labor standards by using another employer as a “shield.”

The New Test

The final rule clarifies what business practices may result in a joint employer status. Specifically, it requires the DOL to examine whether a potential joint employer:

- Hires or fires the employee
- Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree
- Determines the employee’s rate and method of payment
- Maintains the employee’s employment records

What’s more, the final rule outlines other factors that may be relevant to a joint employer status determination. Together, these clarifications should make it easier for employers to remain FLSA-compliant and avoid potential litigation. For more information, review the DOL’s [news release](#).



Despite the potential impact of a crisis, the majority of businesses do not have a crisis management plan in place.

Creating a Crisis Management Plan

Today's businesses face innumerable exposures. Cyber attacks, natural disasters, data breaches, publicized issues regarding employment practices and other organizational crises are not only common, they can permanently damage a company.

In fact, if handled incorrectly, a crisis can potentially harm people and property, damage your reputation, interrupt business operations, affect profitability or even devalue your organization as a whole. To prepare for and respond to a crisis, organizations need to create a crisis management plan that outlines the policies and procedures your business will follow when emergency situations arise.

When creating a crisis management plan, consider the following best practices:

- **Perform a risk assessment**—When creating a plan, it's important to assess risks specific to your business. During your risk assessment, work with your organization's leadership team and other key stakeholders to identify potential threats and vulnerabilities. Such threats can include public relations issues or product recalls.
- **Determine the business impact of common risks**—After you've performed a risk assessment, it's important to understand how any threats could impact your business. To accomplish this, consider conducting a business impact analysis (BIA). BIAs can help you identify the operational and financial impact of a crisis, whether it be lost sales, increased expenses or regulatory fines. By predicating the consequences of a threat, your businesses will be able to focus its recovery efforts more effectively.
- **Identify potential responses**—Once you've identified your business's unique risks and their potential impact, you can then evaluate how you will respond to each threat. When planning your responses to individual crises, think critically about the resources you will need to resolve each issue. For example, responding to a product recall may require a response team, a recall plan, an internal product recall team and legal counsel.

These initial steps are critical as you build your own crisis management plan and must be well documented to promote employee training and education. Also, review crisis management plans on a regular basis to account for any organizational changes or new threats.

In addition to having a plan in place, the right insurance policy can help mitigate the damage of a crisis.