

NLRB Joint Employer Standard Takes A Hit

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In *NLRB v. CNN America, Inc.*, the U.S. Court of Appeals for the District of Columbia Circuit recently rejected a finding by the National Labor Relations Board (NLRB) that CNN and a technical services company were joint employers. In remanding the case to the NLRB for further analysis, the Court held the NLRB failed to articulate how CNN and the service company satisfied the NLRB's traditional requirement that joint employers share "direct and immediate" control over a group of employees. This decision is a step in the right direction for employers since the NLRB took an expanded view of joint employment liability in the 2015 *Browning-Ferris* decision. In rejecting the NLRB's joint employer finding, the Court unanimously found the NLRB had deviated from the controlling board law for three decades requiring direct and immediate control in a joint employment relationship. With the *Browning-Ferris* decision still pending on appeal at the D.C. Circuit, the CNN case may provide insight into how the D.C. Circuit may ultimately rule in *Browning-Ferris*. If the D.C. Circuit remands the case to the NLRB like it did with the CNN decision, by that time the NLRB will likely have a Republican majority that may reshape the joint employer standard. Alternatively, the D.C. Circuit could issue a ruling that sets *Browning-Ferris* on a path for Supreme Court review.

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