National Labor Relations Board Joint Employer Rule Summary

On October 26, 2023, the National Labor Relations Board (NLRB) issued the final joint employer rule that broadens the NLRB's definition of *employer*. What does this mean to as a provider? It could potentially increase liability and exposure for long term care (LTC) centers if they utilize staffing agency or contract workers. The rule was originally set to take effect on December 26, 2023, but late last year the NLRB extended the effective date to February 26, 2024, in response to legal challenges (SEUI's petition to strengthen the new rule and the U.S. Chamber of Commerce and Coalition of Business Groups that allege the new rule is unlawful and should be struck down). Employers should prepare to comply with the new rule in anticipation of February 26.

The final rule rescinds a 2020 final rule issued by the previous NLRB. When two entities are found to be joint employers under this rule, it could hold both employers liable for potential labor law violations committed by either of them -- along with being responsible for bargaining obligation. More specifically, the NLRB final rule provides that a business may be deemed a joint employer whenever it controls or exercises the power to control (whether directly, indirectly, or both) any of the following seven categories of "essential terms and conditions of employment" for a group of workers:

- Wages, benefits, and other compensation
- Hours of work and scheduling
- The assignment of duties to be performed
- The supervision of the performance of duties
- Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline
- The tenure of employment, including hiring and discharge
- Working conditions related to the safety and health of employees

In the LTC context, this rule can have an impact on employees of a staffing company and/or contractors (which could be therapists, housekeeping, food service, etc.) who are either unionized, take steps to unionize, or who are non-supervisory employees (and nonetheless covered by Section 7 of the National Labor Relations Act even if not unionized). **Providers using staffing agencies or contract workers should review the rule carefully and consider seeking counsel from an employment law attorney to assess the risks if you may be considered a joint employer under the expansive new rule.**

On the advocacy side, the International Franchise Association is leading a coalition effort (which AHCA/NCAL signed onto) in support of urging legislators to support a Congressional Review Act resolution to nullify the joint employer rule (NLRB's joint employer rule). The bipartisan resolution (S.J.Res.49/H.J.Res.98) was introduced in the U.S. Senate by Sensators Bill Cassidy (R-LA) and Joe Manchin (D-WV) and in the U.S. House of Representatives by Rep. John James (R-MI-10). H.J.Res.98 was recently approved by the full House of Representatives by a vote of 206-177 and awaits full Senate consideration. The letter is available here.

Please contact AHCA's Associate VP of Workforce and Constituency Services Dana Ritchie with any questions.