Legal Matters®

General
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Department of Labor proposes new joint-employer rule to address inconsistent interpretation by courts

The U.S. Department of Labor has issued a proposed rule to clarify when multiple businesses may be considered joint employers under federal wage and hour laws, aiming to create a more consistent national standard across statutes and courts.

The proposed rule would establish a single test for determining joint-employer status under the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act.

The DOL said the rule is intended to address inconsistent interpretations across federal courts by aligning the analysis under these statutes and providing clearer regulatory guidance.

The goal is to ensure that employers and employees have a consistent understanding of when more than one entity may be responsible for wages and working conditions.

The proposed rule also reflects the latest shift in a long-running debate over joint-employer liability, which has varied across administrations and federal courts. The DOL's approach is generally viewed as seeking to provide clearer boundaries around when businesses may be held responsible for another entity's workers, particularly in franchising and contracting arrangements.

Liability implications

Under the proposed rule, when a joint employment relationship exists, multiple employers may be jointly and severally liable for compliance with wage and hour obligations.

That includes responsibility for all hours worked, minimum wage, overtime pay and other required compensation.

The DOL emphasized that clearer standards are intended to improve enforcement efficiency while helping ensure that workers receive all wages owed, even where one employer is unable or unwilling to pay.

Joint-employer status remains a critical issue for businesses that rely on staffing agencies, subcontractors, franchise models, or other multi-entity arrangements. A finding of joint employment can significantly expand liability exposure.

The proposed rule reflects an effort to reduce uncertainty created by differing court decisions and to provide a more predictable framework for evaluating shared employment relationships.

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VUONO & GRAY, LLC

310 Grant Street, Suite 2310 | Pittsburgh, PA 15219 | (412) 471-1800 | www.vuonogray.com

AI and privilege: A new risk for estate planning

A recent federal court decision is raising new questions about how clients use artificial intelligence tools when thinking through legal matters.

In *United States v. Heppner,* a New York federal court held that documents generated by a defendant using a public AI chatbot were not protected by attorney-client privilege or the work product doctrine.

The defendant had used an AI platform to draft materials analyzing potential legal defenses after learning he was under investigation.

He argued those materials were privileged because they were intended for discussions with counsel. The court disagreed, finding that communications with an AI tool are not the same as communications with a lawyer and lack the confidentiality required for privilege.

Why this matters in estate planning and disputes

While *Heppner* arose in a criminal context, its reasoning extends well beyond that setting. For estate planning, and especially contentious estates (e.g., disinherited children, unequal inheritance, capacity, undue influence concerns), the implications are practical and immediate.

Clients should think twice before using AI tools to:

- Draft or revise personal notes about estate plans
- Explore "what-if" scenarios involving heirs or asset distribution
- Summarize family dynamics or concerns about beneficiaries
- Prepare talking points before meeting with counsel

Those inputs may feel private. Under *Heppner,* they may not be.

In a will contest or trust dispute, opposing parties often seek evidence of intent, prior drafts of statements, and communications reflecting changes in thinking.

AI-generated drafts, prompts or summaries could become discoverable evidence, particularly if they include sensitive details about family relationships, capacity or motivations.

Practical impact

For individuals considering or updating an estate plan:

- Use AI for basic high-level education, not legal advice
- Avoid entering information you would not want reviewed in court or shown to your family in a lawsuit
- Treat AI as a research or general information tool, not a confidential advisor
- When in doubt, take those thoughts directly to legal counsel instead

The core lesson from *Heppner* is about longstanding privilege rules applied in a new context.

When it comes to estate planning, how clients think through decisions can matter just as much as the documents they sign. Increasingly, that thought process may leave a digital trail.

And unlike a private conversation with counsel, that trail may not be protected.

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How bike accident cases differ from automobile cases

Cycling is an enjoyable pursuit, a great form of exercise, and an economical form of transportation, but it can be dangerous.

According to figures from the National Highway Transportation Safety Administration, roughly 1,000 people on bicycles are killed each year in traffic crashes that are reported to police, accounting for about 2 percent of all traffic fatalities, and about 45,000 bicyclists are injured in crashes annually.

As with motorists and passengers hurt in car crashes, injured bicyclists are entitled to compensation for their harm if the accident is someone else's fault. But there are some significant differences between a bike case and a car case.

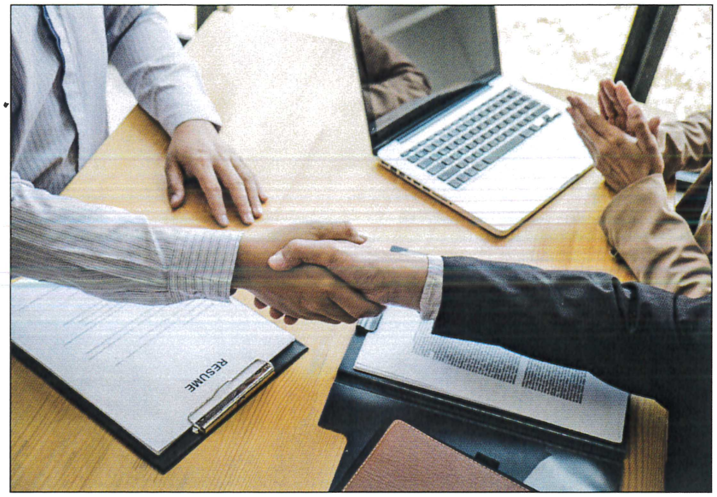
For example, bicyclists often suffer more serious injuries, since they absorb the full impact of the crash directly through their bodies, unlike in auto collisions, where they're protected by seatbelts and airbags as well as the vehicle frame itself. As a result, bicycle crashes often result in traumatic brain injuries, fractures and severe harm to the spinal cord, resulting in higher medical and rehabilitation expenses.

Additionally, many people have a bias against bicyclists, viewing them as daredevils and pests who don't obey traffic rules and don't belong on the road. This means that insurance companies may try and argue that the cyclist was taking unreasonable risks, such as riding too close to traffic, traveling too slowly, and wearing clothing that made it hard to see them — things the cyclist will have to overcome if they seek to hold an at-fault driver responsible.

Insurers will also try and fault a cyclist who wasn't wearing a helmet, even if your state doesn't require it. However, it's important to note that while it's a very good idea to wear a helmet, this doesn't clear a driver of responsibility if the crash is their fault.

If you've been injured while cycling, it's important to speak to a personal injury lawyer who can help you navigate all these issues and obtain the compensation you're entitled to.

DOJ alleges sham recruiting process used to exclude U.S. workers



The U.S. Department of Justice has filed a complaint against Cloudera, alleging that the company used a separate and ineffective recruiting process to deter U.S. workers from applying for certain roles while favoring foreign workers seeking permanent residency.

According to the DOJ, the company directed U.S. applicants to submit resumes through a designated email address that did not accept external messages for an extended period. As a result, applications from U.S. workers were allegedly never received or considered.

At the same time, the company proceeded with hiring foreign workers under the permanent labor certification process, known as PERM, which requires employers to demonstrate that no qualified U.S. workers are available for the roles.

The complaint was filed under the Immigration and Nationality Act through the DOJ's Immigrant and Employee Rights Section, which enforces anti-discrimination provisions related to citizenship status.

Government focuses on good-faith recruitment representations

The DOJ alleges that the company made representations to the Department of Labor that it had conducted good-faith recruitment of U.S. workers despite maintaining a process that effectively prevented those applicants from being considered.

The case centers on the integrity of the PERM process, which requires businesses sponsoring foreign workers for permanent residency to test the U.S. labor market through prescribed recruitment steps before moving forward with sponsorship.

The DOJ alleges that the company created a parallel hiring track that bypassed those requirements by directing U.S. applicants to a nonworking channel while reserving roles for visa holders.

Immigration compliance and enforcement exposure

The complaint highlights the intersection of immigration sponsorship obligations, recruiting practices, and government enforcement risk.

For businesses using PERM sponsorship programs, the case underscores that recruitment processes must not only satisfy technical requirements but must function in a genuine and accessible manner.

The allegations also demonstrate increasing scrutiny of whether companies are making accurate representations to federal agencies in connection with labor certification processes.

Review of recruiting channels and sponsorship procedures

Companies using immigration sponsorship programs should confirm that recruitment channels are accessible, that applications are actually received and reviewed, and that representations made to the Department of Labor reflect the reality of the hiring process.

Coordination between recruiting, HR, immigration counsel and compliance teams is increasingly important where hiring practices intersect with labor certification obligations and government filings.

The case signals continued enforcement focus on whether companies are making genuine, good-faith efforts to recruit U.S. workers before sponsoring foreign candidates.

Department of Labor proposes joint-employer standard

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Employers should evaluate how their business relationships and operational structures may be affected by a more clearly defined joint-employer standard.

That includes reviewing relationships with staffing firms, contractors and affiliated entities to assess potential shared control over workers and ensuring that roles and responsibilities in employment-related agreements are clearly defined.

Employers should also coordinate with their attorneys to assess potential joint-employer exposure and consider participating in the rulemaking process.

Vuono & Gray, LLC

310 Grant Street, Suite 2310
Pittsburgh, PA 15219
(412) 471-1800
www.vuonogray.com

Passport enforcement tied to unpaid child support expanded

The U.S. State Department is expanding enforcement of a longstanding federal law permitting denial or revocation of passports for individuals with significant unpaid child support obligations, a move that could affect thousands of Americans with past-due support orders.

Federal law has long authorized the State Department to deny or revoke passports for individuals owing more than $2,500 in court-ordered child support arrears. Historically, enforcement often occurred during passport applications or renewals.

According to recent reports, the State Department is now beginning proactive revocations of existing passports, initially targeting individuals owing $100,000 or more in unpaid child support. Officials indicated the program may later expand to include all qualifying individuals above the $2,500 statutory threshold.

Passport restrictions may affect international travel

Once revoked, a passport may no longer be used for international travel, including by individuals who are already outside the United States.

Those abroad at the time of revocation may need to obtain limited-validity travel documents through a U.S. embassy or consulate in order to return home.

Officials stated that passport eligibility generally will not be restored until the child support debt is resolved and the Department of Health and Human Services updates the individual's delinquency status with the State Department, a process that may take several weeks.

Program reflects broader child support collection efforts

The passport restriction program has existed since the late 1990s and has long been used as a tool to encourage compliance with child support obligations.

Federal officials have reported that the program has contributed to the collection of substantial amounts of overdue support over time.

Recent reports indicate that enforcement efforts are becoming more proactive, with increased coordination and data sharing among agencies regarding delinquent support obligations.

Importance of addressing arrears proactively

The development serves as a reminder that unpaid child support obligations can trigger consequences extending beyond traditional collection efforts, including restrictions affecting international travel and passport status.

Individuals with substantial child support arrears may wish to review their status with the relevant state child support enforcement agency and address any outstanding obligations or payment arrangements before passport restrictions are imposed.

If you are under a child support order, your attorney can help you ensure compliance to avoid any passport issues.