June 22, 2026

Daniel Navarrete
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via regulations.gov

RE: SHRM's Comment on the Wage and Hour Division's proposed rule on Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, RIN 1235-AA48

Dear Director Navarrete,

As the trusted authority on all things work, SHRM is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today's evolving workplaces. With nearly 340,000 members in 174 countries, SHRM touches the lives of more than 362 million workers and their families globally. SHRM's membership of HR professionals and business executives operates at the intersection of talent acquisition, people management, and compliance. By leveraging the collective experience and expertise of our membership, SHRM provides insights grounded in data and practical, real-world experience.

I. Workforce Trends, Staffing Challenges, and the Need for Regulatory Clarity

SHRM welcomes the opportunity to comment on the Department of Labor's (DOL) Wage and Hour Division's ("the Division") proposed rule on joint employer status under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA) ("proposed rule").

SHRM's membership is sector-agnostic and represents organizations across industries. By engaging with professionals from HR teams to the C-suite, we see firsthand how talent acquisition and development intersect, providing a comprehensive view of workforce trends and challenges. With our robust Thought Leadership department, SHRM transforms these insights into actionable workplace strategies and public policy solutions. This positions SHRM as the workplace meteorologist, helping organizations and policymakers forecast workforce trends, navigate disruption, and turn insight into action to prepare for the future of work.

(A) Workforce Recruitment and Talent Acquisition Challenges

As organizations report growing difficulties in hiring talent, the struggle to secure the right people is jeopardizing their ability to stay competitive in today's rapidly evolving labor landscape. While external labor market conditions play a significant role, internal factors are also driving these challenges. Recruitment has long been a challenge for organizations, but today's technology-driven environment has only amplified the pressure. Recruitment functions that fail to adapt risk falling behind and missing out on the talent necessary to drive organizational success.

SHRM research found that nearly seven in 10 (68%) HR professionals reported difficulty recruiting full-time employees, and more than half of those HR professionals (53%) said recruiting had become more difficult compared with one year ago.[1] Additional SHRM research found that despite a cooling labor market, both experienced and expected hiring difficulty have increased for two consecutive quarters since Q4 2025.[2] After a period of easing hiring difficulty throughout 2025, 2026 data from HR executives suggest that organizations are once again facing increased challenges in finding talent.[3] Meeting these challenges requires investing in internal talent pipelines, and, where appropriate, exploring alternative staffing arrangements. While labor market conditions have improved for some organizations, recruitment challenges persist for many others, suggesting that workforce planning will remain complex for the foreseeable future.

(B) Use of Alternative Staffing Arrangements and Need for Rulemaking

Workforce trends identified through SHRM research underscore the need for organizations to adapt their recruitment and talent strategies and explore new approaches to meeting workforce needs effectively. These approaches may include expanding talent pools, filling critical roles, and strengthening organizational capabilities through diverse skills and perspectives, including the use of workers engaged by third parties and other flexible staffing arrangements.

After excluding respondents whose organizations do not currently use or have never used third-party labor arrangements (16%) and those who were unsure (3%), SHRM research found that approximately 80% of HR professionals reported interacting with third-party labor arrangements in some capacity.[4] The most commonly used arrangements were temporary staffing agency workers (44%), project-based contractors or vendors (44%), and subcontractors (30%).[5] Organizations leverage these arrangements to meet a variety of workforce needs. The most frequently cited reasons include supporting project-based or short-term work (54%), accessing specialized expertise or technical skills (49%), and addressing temporary staffing shortages (46%).[6] Other important uses include backfilling employee leave or vacant positions (26%),

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[1] Source: 2026 Talent Trends, SHRM, 2026.
[2] Source: Q2 2026 CHRO Outlook, SHRM, 2026.
[3] Source: Q2 2026 CHRO Outlook, SHRM, 2026.
[4] Source: Government Affairs Midyear Check-in, SHRM, 2026.
[5] Source: Government Affairs Midyear Check-in, SHRM, 2026.
[6] Source: Government Affairs Midyear Check-in, SHRM, 2026.

outsourcing non-core business functions (24%), and managing seasonal or cyclical demand (22%).[7] In sum, SHRM's research highlights the critical role that third-party staffing arrangements play in the operations of the vast majority of businesses. As a result, the rules governing these relationships, including joint employer standards, are an important consideration for ensuring compliance with labor, tax, and employment laws.

Given the significant implications of joint employer determinations under federal law, employers need a clear, predictable, and durable framework for evaluating these relationships. Frequent shifts in legal standards create uncertainty, making it more difficult for organizations to understand their compliance obligations and structure workforce relationships appropriately. Among HR professionals whose organizations participate in joint employment, over a third of them said that balancing oversight with legal exposure (36%), compliance administration (35%), and contract/vendor management (31%) are the top challenges that joint employer regulation creates for their organization.[8] Clarity, consistency, and stability are therefore essential to support compliance and informed business decision-making.

Accordingly, SHRM has maintained a strong interest in this issue and has actively engaged with federal agencies and policymakers on joint employer standards and workforce relationships under a range of federal employment laws. For example, SHRM has long participated in the joint employer rulemakings under the FLSA, including by supporting and recommending revisions to the 2019 notice of proposed rulemaking (NPRM) and opposing the 2021 rescission of the 2020 Joint Employer Rule. SHRM has also submitted comments on the National Labor Relations Board's joint employer rulemaking, emphasizing the need for a clear and consistent standard.

II. SHRM's Assessment of the Proposed Rule

SHRM largely supports the proposed rule as it helps satisfy organizations' and HR professionals' need for certainty, enabling the planning and workforce structuring that support long-term innovation and economic growth. Additionally, SHRM supports the Division's decision not to readopt the pre-2020 joint employer analysis and agrees with the Division's conclusion that the prior approach did not effectively clarify the existence of vertical joint employer relationships.

SHRM believes that joint employment regulations must take a modern, pragmatic view of joint employer concerns, recognizing the importance of incentivizing entities that own and manage the work environment to create uniform policies that serve employees and other non-employee personnel, whether the workers are independent contractors, subcontractors, temporary workers, franchisees, contract workers, other employees of third parties, or workers in other arrangements.

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[8] Source: Government Affairs Midyear Check-in, SHRM, 2026.

the work environment to create uniform policies that serve employees and other non-employee personnel whether the workers are independent contractors, subcontractors, temporary, franchisee, contract workers, other employees of third parties, and other arrangements.

(A) Framework for Determining Joint Employer Status

SHRM endorses the proposed rule's focus on factors such as control, actual touchpoints, and related considerations that ensure the analysis does not turn on factors that are common in ordinary business relationships.

(i) Direct, Indirect, and Reserved Control

In particular, SHRM supports the proposed rule's primacy-of-actual-practice principle (§ 791.110), which characterizes reserved rights as "merely less relevant" rather than entirely irrelevant. This approach preserves the evidentiary value of contractual language as an expression of the parties' intent while preventing boilerplate provisions from overriding economic reality. A well-drafted written agreement, while not determinative, remains a relevant indicator of the parties' negotiated relationship. Courts and investigators should therefore consider whether a party has ever prevented another party from exercising a contractual right. SHRM agrees with the Division's nuanced framework for analyzing actual practice as compared with potential rights, which, based on SHRM's expertise in workplace issues, reflects the true implications of such arrangements for the underlying inquiry and avoids privileging form over substance.

SHRM agrees with the Division that "the potential joint employer's actual exercise of control is more relevant than such ability, power, or right." SHRM further endorses the final sentence of proposed § 791.115(c), which states that "a potential joint employer's ability, power, or reserved right to act in connection with any of the contractual provisions or business practices identified in § 791.125 does not make joint employer status more or less likely under the FLSA."

SHRM offers a minor drafting suggestion regarding the discussion of indirect control. The proposed rule states: "But that employer's voluntary decision to grant the potential joint employer's request, recommendation, or suggestion does not constitute indirect control that can demonstrate joint employer status." SHRM believes this provision could be clarified for readability as the phrase "that employer" may be read as presuming the existence of indirect control, and the relationship between the parties could be stated more clearly. SHRM's suggested language is: "That employer's voluntary decision to grant another person or business's request, recommendation, or suggestion does not indicate that said person or business has indirect control that can demonstrate joint employer status."

(ii) Application of the *Bonnette* Factors

As it did in response to the 2019 NPRM, SHRM supports the central feature of the proposed rule: A four-factor test for vertical joint employment based on the principles articulated in *Bonnette v.*

California Health & Welfare Agency (the *Bonnette* factors). SHRM also endorses the Division's proposed modification to the first *Bonnette* factor by emphasizing whether the putative joint employer actually hired or fired the employee, rather than whether it *merely possessed the authority to do so* (emphasis added). This modification aligns with the statutory requirement that a putative joint employer "act[]" in the interest of an employer in relation to an employee.

In addition, the Division should clarify the role of maintenance of employment records as the fourth *Bonnette* factor. While SHRM agrees with the inclusion of employment records within the *Bonnette* framework, it is important to make explicit that employment records should not operate as a standalone "hook" for importing unrelated economic reality considerations. Where the *Bonnette* factors, taken as a whole, overwhelmingly point in one direction, the mere existence of employment records should not be treated as sufficient to reopen the analysis to additional non-*Bonnette* evidence. SHRM does not believe the Department intended the employment records factor to function in that manner, and a clarification to that effect would help preserve the integrity and coherence of the overall test.

(iii) <u>Business Relationships and Organizational Interconnectedness</u>

As organizations and work itself become more intertwined, SHRM knows that, in practice, work relationships are rarely conducted in total isolation, and a degree of interconnection is common and often unavoidable. However, the mere presence of overlapping relationships or shared operational connections should not, by itself, be sufficient to establish joint employer status. A "thread" that links multiple organizations does not necessarily create the kind of control or association required for joint liability.

In that spirit, SHRM welcomes the DOL's refinement of the horizontal joint employer test to focus on whether putative joint employers are acting either independently or are disassociated, or whether they are "sufficiently disassociated" to justify joint employer treatment. See § 791.120(b). The prior "completely disassociated" standard was unworkable and confusing. Additionally, SHRM has previously observed, in putative vertical joint employer scenarios, "the employer and the other benefited person are almost never 'completely disassociated,' and the real question is ... whether the other person's actions in relation to the employee merit joint and several liability under the [FLSA]."

To further clarify this operational reality, SHRM offers a suggestion regarding proposed § 791.110(a). The final rule should clarify that the mere fact that a "second-tier" business benefits from services performed by a worker does not, by itself, establish a joint employer relationship. Multiple businesses may benefit from the same worker's labor, and joint employment should exist only when the criteria set forth in § 791.115 are satisfied.

Finally, SHRM supports the Division's clarification that certain business relationships — such as sharing a vendor or operating as franchisees of the same franchisor — are, standing alone, insufficient to establish that two employers are sufficiently associated to be considered joint employers. Overall, based on SHRM's extensive experience, SHRM agrees that these labels are not in and of themselves useful proxies for the multitude of real-world practices that they are at times used to refer to, and alone do not satisfy the test set forth in § 791.120(a). SHRM supports the Division's conclusion that operating as a franchisor, entering into a brand and supply agreement, or utilizing a similar business model does not make joint employer status more or less likely under the FLSA. The existence of a particular business model, standing alone, should not be treated as probative of joint employer status.

(B) Organization and Structure of the Proposed Rule

The proposed rule is a welcome step in the right direction, both in its analytical framework and its organization of these important concepts.

(i) Distinction Between Vertical and Horizontal Joint Employment

SHRM supports codifying the distinction between vertical and horizontal joint employment. This distinction provides much-needed conceptual clarity because the legal and operational considerations relevant to horizontal joint employment relationships often differ significantly from those relevant to vertical relationships. SHRM research supports this approach: among HR professionals at organizations that use joint employment arrangements, 52% agreed that distinguishing between vertical and horizontal joint employment would improve their organization's ability to assess compliance obligations and legal risks most relevant to their operations, while only 14% disagreed or strongly disagreed.[9] Separating these analyses makes the framework more understandable and more usable for HR professionals responsible for maintaining compliance while managing workplace operations.

(ii) Distinction Between Joint Employment and Worker Classification

While the joint employer inquiry and the worker classification analysis share some conceptual touchpoints, they are distinct frameworks that serve different legal functions. SHRM recognizes that both involve assessments of workplace relationships and control, and that certain factual considerations may appear in both contexts. However, the overlap does not make the inquiries interchangeable. This distinction supports SHRM's view that economic dependence is not the "ultimate question" or "ultimate test" in the joint employer analysis.[10]

[9] Source: Government Affairs Midyear Check-in, SHRM, 2026.

[10] This is not to be confused with SHRM's ardent support of economic dependence as the central inquiry in the worker classification analysis. From SHRM's April 2026 comment, "SHRM also strongly supports emphasizing economic dependence as the central factor and designating the two core factors, which gives greater weight to the individual's control over the work and opportunity for profit or loss than to the additional factors. This more sustainable and practical framework is central to SHRM's support for the proposed rule, which is informed by member insights and extensive case law."

SHRM is encouraged by the Division's effort to clearly differentiate joint employment, which operates primarily as a limited doctrine concerned with the assignment of liability, developed through judicial interpretation, from the separate inquiry into whether an individual is an employee. Maintaining this separation is critical to ensuring that each framework is applied consistently and for its intended purpose.

Because this distinction is so important, SHRM recommends incorporating it directly into the regulatory text by affirmatively stating in § 791.115(e) that economic dependence is not the ultimate test of joint employment and is generally less relevant in determining whether multiple businesses jointly employ the same worker. Potential language for consideration: "Economic dependence is not the ultimate test of the joint employment analysis and is usually less relevant than the factors described in § 791.115(a). Indicia of economic dependence often may not be material to the analysis and need not be considered in every case."

In that same vein, SHRM does not believe that the number of contractual relationships maintained by a putative joint employer is relevant to the question of economic dependence. SHRM does not see a meaningful connection between the number of contractual relationships maintained by a putative joint employer and the degree of economic dependence between a worker and that entity.

Accordingly, while the two frameworks may draw on overlapping factual considerations, they are measuring different things. The presence of economic dependence in the worker classification context does not translate into a meaningful proxy for joint employer status, because it does not illuminate the core issue in the joint employment analysis — namely, whether a putative joint employer either has exerted a sufficient level of control over a worker for it to have assumed responsibility for the worker, or whether that putative joint employer is sufficiently associated with another employer and *de facto* jointly employs a worker. SHRM advocates for the final rule to make that distinction as clear as possible.

III. Public Policy Benefits of the Proposed Rule

The proposed rule appropriately recognizes that businesses and workers should be able to benefit from training, resources, and positive workplace practices within shared work environments without those efforts, standing alone, triggering joint employer liability. In doing so, the framework helps ensure that organizations are not discouraged from managing workplaces effectively or engaging constructively with vendors and other third-party providers.

SHRM believes it is important to consider both dimensions of the behavioral changes that result from legal uncertainty in this area: (1) how organizations interact with vendor companies and other third-party providers, and (2) how organizations engage with non-employee or leased workers in shared workplaces. Both are negatively affected when businesses perceive a heightened risk of joint employer liability.

This concern is reflected in SHRM research, which found that 50% of HR professionals agreed or strongly agreed that concern about joint employer liability may discourage organizations from engaging directly with vendors on workforce compliance and operational issues. Consistent with that finding, organizations report limiting or avoiding activities involving third-party labor providers, including sharing HR policies or standards (23%), providing training or operational guidance (23%), setting workplace conduct expectations (22%), monitoring employment eligibility compliance (19%), conducting compliance audits or reviews (18%), and reviewing wage and hour practices (15%).[11]

SHRM's research also found that 43% of HR professionals reported their organization has adopted specific practices to reduce perceived joint employer risk.[12] Among those respondents, 42% indicated limiting vendor worker access to internal systems or platforms.[13] Other reported measures include requiring communications through vendor supervisors (20%), revising vendor contracts to reduce operational involvement (19%), reducing direct training of vendor workers (10%), limiting manager interaction with vendor workers (10%), and restricting direct communication with vendor workers (9%).[14]

Collectively, these findings demonstrate that legal uncertainty can alter workforce management practices in ways that reduce operational efficiency, increase administrative complexity, and discourage compliance-oriented activities. In some cases, organizations may face competing obligations, where actions that promote compliance with workplace laws or policies could simultaneously be viewed as evidence of a joint employer relationship. This tension is particularly apparent where federal, state, or local laws require or encourage actions relating to workplace safety, harassment prevention training, employment eligibility compliance, or other workplace standards that may affect contractors and service providers operating on-site.

For that reason, the final rule should make clear that these types of routine, compliance-oriented, and workplace-management activities are not, by themselves, indicia of a joint employer relationship. Organizations should be encouraged, not penalized, for taking reasonable steps to promote legal compliance, workplace safety, and appropriate conduct among all individuals working within their facilities. These findings are consistent with the Department's economic analysis regarding the impact of legal uncertainty on innovation and beneficial economic activity and underscore the importance of a framework that permits appropriate coordination without inadvertently converting prudent business practices into joint employer exposure.

This outcome benefits workers as well as organizations. Workers in a variety of arrangements — including independent contractors, consultants, subcontractors, temporary workers, leased employees, and employees of franchisees operating under franchise brands, as well as emerging workforce arrangements — should be able to benefit from training, resources, and positive

[11] Source: Government Affairs Midyear Check-in, SHRM, 2026.
[12] Source: Government Affairs Midyear Check-in, SHRM, 2026.
[13] Source: Government Affairs Midyear Check-in, SHRM, 2026.
[14] Source: Government Affairs Midyear Check-in, SHRM, 2026.

workplace practices available in shared work environments. These arrangements serve legitimate business purposes and are rarely intended to evade legal obligations.

Finally, SHRM supports applying the rule not only under the FLSA but also under the FMLA and MSPA. The benefits of uniformity are substantial, especially since the FMLA and MSPA use core definitions from the FLSA. Employers should not be required to apply different legal analyses to determine status across overlapping compliance frameworks. A consistent standard promotes predictability, efficiency, and compliance for employers and workers alike.

IV. Recommendations for Additional Guidance and Implementation Resources

SHRM appreciates the Division's use of examples throughout the proposed rule and suggests clarifications of the analysis and outcomes reflected in certain examples. In the final rule, stakeholders, particularly HR professionals responsible for day-to-day management, would benefit from additional examples or guidelines clarifying circumstances' relevance to the joint employment inquiry, including:

- Agreements requiring the direct employer to ensure that its employees meet quantity, quality, or completion standards established by the benefiting entity do not establish or contribute to a joint employer finding by the benefiting entity;
- Agreements under which the direct employer and benefiting entity share certain administrative functions related to contract implementation, such as insurance or training services, do not establish or contribute to a joint employer finding by the benefiting entity;
- Agreements allowing the benefiting entity to audit and take appropriate action to enforce compliance with legal, regulatory, or conduct standards, including federal, state, and local wage and hour requirements, do not establish or contribute to a joint employer finding by the benefiting entity;
- Access to the benefiting entity's electronic portals, systems, forms, tools (including AI tools), or guidelines does not establish or contribute to a joint employer finding by the benefiting entity;
- Participation in meetings conducted by the benefiting entity concerning health, safety, legal compliance, or related topics does not establish or contribute to a joint employer finding by the benefiting entity;
- The Department should also consider identifying and applying certain AI-related policies and practices as irrelevant to the joint employment analysis, including:
    - General AI-use policies implemented on behalf of the benefiting entity that apply to employees of the direct employer;
    - Policies governing the sharing of AI tools, platforms, tokens, agents, workflows, prompts, or related technologies; and
    - The sharing of such AI resources among the benefiting entity, the direct employer, and the direct employer's employees.

Additionally, as the final rule is implemented, SHRM would advocate for resource guides, webinars, and other educational materials written in plain language and in connection with interested stakeholders.

V. Conclusion

Following publication of the final rule and any accompanying materials, SHRM commits to broadly disseminating guidance through its member communication channels to ensure that information reaches the professionals responsible for implementation. With a network that includes 556 chapters and 51 state councils, SHRM has the infrastructure to rapidly distribute guidance, best practices, and updates to employers across industries and geographies. This reach enables the Division to scale its guidance efficiently while helping organizations implement the rule correctly and consistently. SHRM's regulatory advocacy prioritizes clarity, consistency, and compliance, because we know that the law functions most effectively when those charged with compliance can understand and communicate its requirements. SHRM stands ready to support the development, implementation, and refinement of joint employer regulations.

Sincerely,

Emily M. Dickens, J.D.
Chief Administrative Officer, SHRM