



June 22, 2026

The Honorable Andrew Rogers  
Administrator  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room S-3502  
Washington, D.C. 20210

*Submitted via regulations.gov*

**RE: Joint Employer Status under FLSA, FLMA, and MSPA; RIN 1235-AA48**

Dear Administrator Rogers:

FMI – The Food Industry Association welcomes the opportunity to comment on the Department of Labor’s (DOL) notice of proposed rulemaking (NPRM) 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). FMI appreciates DOL’s action in the NPRM to reestablish a joint employer standard under the Fair Labor Standards Act (FLSA) that draws largely from the 2020 final rule, with modifications to address case law, and to create joint employer standard consistency under the Family and Medical Leave Act (FLMA) and Migrant and Seasonal Agriculture Worker Protection Act (MSPA).

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain – from retailers that sell to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services – to amplify the collective work of the industry.

The food industry provides a wide range of full-time, part-time, seasonal, and flexible workforce opportunities in a diverse variety of careers and serves as an essential employer in every community around the country. FMI members include food retailers, wholesalers, and product suppliers that employ millions of Americans in consumer-facing, service-related businesses of all sizes. The diversity of career opportunities offered through the food industry provides individuals with employment at any stage of life and any education level. FMI members have unique needs in meeting staffing requirements in stores, distribution facilities, and divisions throughout their business operations. In addition to hiring direct employees, these businesses fulfill operational needs through vendors, contracts, and temporary staffing relationships.



The NPRM differentiates between two types of possible joint employment scenarios: vertical joint employment and horizontal joint employment. As noted above, the NPRM draws heavily from DOL's 2020 joint employer rule with further regulatory clarifications to address case law. The NPRM defines vertical joint employment as "an employee is jointly employed by two or more employers that simultaneously benefit from the employee's work," and proposes to use four core factors to determine this arrangement as whether two or more employers: 1) hire or fire the employee; 2) supervise and control the employee's work schedule or conditions of employment to a substantial degree; 3) determine the employee's rate and method of payment; and 4) maintain the employee's employment records. The NPRM defines horizontal joint employment as a scenario when "an employee works separate hours for two (or more) employers in the same workweek, and the employers are sufficiently associated with each other with respect to the employment of the employee such that they are joint employers."

FMI appreciates that the NPRM seeks to provide businesses with clear regulatory guidance for identifying joint employer relationships that businesses of all sizes can comprehend. FMI members rely on business-to-business relationships for various operational needs. Businesses along the food industry supply chain utilize a host of local, regional, and national vendors, contractors, and outside staffing to supply products and move goods. Retailers often rely on outside companies to provide staffing for product sorting, palletization, loading of trucks, driving products from manufacturers or warehouses to the individual retail stores, unloading, and resorting of products depending on storage requirements, such as temperature. Once unloaded and removed from the transportation and distribution cycle, products must be stocked onto shelves or into stores' many unique sections. Food retailers rely on their own employees as well as vendors, contracted help, and staffing resources to fill important gaps in stocking needs, such as specialized skills for stacking produce or bakery products, to temporary needs such as holiday or seasonal displays.

While the NPRM proposes to provide businesses with certainty that has been lacking in regulations, we have identified three aspects of the NPRM that should be reconsidered, modified, or further clarified. First, FMI appreciates that the NPRM recognizes that contractual agreements to comply with general legal obligations or meet health, safety, and quality control standards do not constitute a joint employer scenario. However, we believe that the NPRM must also recognize that contractual coordination of scheduling for the movement of goods does not constitute a joint employer relationship either. The movement of goods from farm to manufacturing facility to distribution center to store shelf requires a complex web of scheduling to preserve the freshness and safety of food and consumer products. This coordinated supply chain scheduling is not a matter of an employee's availability to work, it is a fundamental aspect of business-to-business relationships in the food industry.

Additionally, the NPRM notes two additional factors that could be considered under the vertical joint employer scenario with respect to a worker: 1) a continuous or repeated relationship with the potential joint employer; and 2) work done at a location or facility owned or controlled by a joint employer. While the NPRM notes that these two factors are less relevant than the core four factors, we feel that these additional factors are too broad and ambiguous and may lead to

confusion. As such, we believe that these additional factors should either be rewritten to be more specific or should be eliminated. Finally, the preamble references the relationship of a "store within a store" yet the NPRM does not provide a specificity or examples of this type of business model. The scenario of a "store withing a store" exists in the grocery industry. As such, FMI members would benefit from additional clarity and examples in the rule.

In conclusion, FMI appreciates DOL for taking the step to reinstate a joint employer standard under the FLSA and apply it to FMLA and MSPA. FMI also appreciates that the NPRM builds on the 2020 rule by addressing issues that have arisen from case law in order to provide businesses of all sizes with additional regulatory certainty. The food industry is ever evolving due to many factors including supply chain challenges, consumer trends and demands, and economic conditions. The staffing needs of manufacturing, warehousing, and retailing must remain flexible to meet these changes and demands. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Christine Pollack".

Christine Pollack  
Vice President, Government Relations