NLRB Changes Course on McDonalds as Joint-Employer

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An NLRB Judge granted the General Counsel's request for a stay mere days before the conclusion of trial in the Board's controversial case against McDonalds USA, LLC alleging that it is a joint-employer with its franchises.

What Employers Need to Know:
The National Labor Relations Board has a new Republican majority and General Counsel which appears ready to move swiftly to rein in what some consider the Board's overreach of agency powers during President Obama's administration. Last month, in Hy-Brand Industrial Contractors, Ltd. 365 NLRB No. 156 (2017), the Board overruled a prior decision in Browning-Ferris Industries, 362 NLRB No. 186 (2015), that greatly expanded the joint employer test. In returning to the decades-long pre-Browning-Ferris standard, which required businesses to have "direct and immediate" control over the terms and conditions of employment before they could be held to be co-employers, the Board has signaled a more employer-friendly attitude.

What's New?
The NLRB's new General Counsel, Trump appointee Peter B. Robb, is sending a similar sea-change message. On Friday an NLRB Judge granted his request for a stay mere days before the conclusion of trial in the Board's controversial case against McDonalds USA, LLC alleging it is a joint-employer with its franchises. The NLRB consolidated complaints, filed against the golden arches in 2014, rocked the business sector as a finding of co-employment would render the franchise industry wholly untenable. Speculation is that the new General Counsel in town is seeking a way to quietly settle this high profile case and put business jitters to rest.

What Actions do Employers Need to Take?
While the new Board is reversing course on its broad interpretation of joint-employers, businesses should continue to review relationships to ensure they are at arms-length, including any work performed by subcontractors.