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Labor Board Reinstates Arbitration Deferral Principles

In a December 2019 [decision](#) (United Parcel Service, Inc.), the National Labor Relations Board (NLRB) returned to its former standards for post-arbitration deferral.

The post-arbitration deferral standard is used by the NLRB to decide whether it will defer to an arbitrator's ruling on a grievance concerning an employee's discipline or discharge that has been alleged to violate the National Labor Relations Act (Act).

Under the reinstated standard, the NLRB will defer to an arbitrator's decision where:

- the arbitration proceedings appear to have been fair and regular
- all parties have agreed to be bound by the decision
- the arbitrator considered the unfair labor practice issue
- the arbitrator's decision is not clearly repugnant to the Act

The Board will continue to safeguard the exercise of employees' Section 7 rights by ensuring that arbitration awards are not clearly repugnant to the Act, while promoting the federal policy in favor of arbitration as the parties' agreed-upon mechanism for resolving employment disputes.

DOL Issues Final Rule on Joint Employers Under FLSA

The Department of Labor (DOL) has published a [final rule](#) updating its regulations concerning joint employer status under the Fair Labor Standards Act (FLSA).



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Under the FLSA, an employee may have, in addition to his or her employer, one or more joint employers, additional individuals or entities jointly and severally liable for the employee's wages.

The DOL's rule introduces a four-factor test for determining joint employer status which include whether the potential joint employer:

- hires or fires the employee
- supervises/controls the employee's schedule or employment conditions to a substantial degree
- determines the employee's rate and method of payment
- maintains the employee's employment records

This final rule does not address "joint employer" status under the National Labor Relations Act, the Employee Retirement Income Security Act, or Title VII of the Civil Rights Act.

The [final rule](#) is effective March 16, 2020.

Consumer Price Index Up 2.3 Percent in 2019

The Consumer Price Index for All Urban Consumers (CPI-U) increased 2.3 percent from December 2018 to December 2019, according to the Department of Labor's Bureau of Labor Statistics' recent report. This was larger than the 2018 increase of 1.9 percent and the largest jump since the 3.0 percent rise in 2011.

The [Consumer Price Index](#) for Urban Wage Earners and Clerical Workers (CPI-W) also increased 2.3 percent over the same 12 months.

EEOC Releases Charge Data For 2019

The Equal Employment Opportunity Commission (EEOC) recently released [detailed information](#) on the 72,675 charges of workplace discrimination filed with the agency in fiscal year 2019, which ended September 30, 2019.

The data show that retaliation (53.8 percent of all charges filed) continues to be the most frequently filed charge, followed by disability (33.4 percent), race (33.0 percent) and sex (32.4 percent) discrimination.

The percentages add up to more than 100 percent, as many charges allege multiple bases of discrimination. Pennsylvania accounted for 4,312 or 5.9 percent of all charges filed in fiscal year 2019. That compares to 4,463 charges filed across the state in fiscal year 2018.

entities.

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