

**October 2015**

**Public Policy**

Letter from the President

**Dorota Gasienica-Kozak, Esquire**

King, Spry, Herman, Freund, & Faul, LLC

Chair, Public Policy Committee

610-332-0390 • dkozak@kingspry.com

**What Constitutes an Employer?**

For nearly three decades, the National Labor Relations Board (NLRB) has defined a joint employer as another employer's employees if the employer meaningfully and directly affects matters relating to the employment relationship. Matters highlighted were ones such as the hiring, firing, discipline of employees and Management and Supervisors and awaiting direction to the employees. Following an NLRB decision released on August 27, 2015, the joint employer standard significantly expanded.

Prior to the NLRB's new decision in the matter of Browning-Ferris Industries of California, Inc., the test for determining joint employer liability was based on the practical reality of the relationship between two employers. In other words, a relationship was found where both employers had a real impact on pay, hiring, firing, and supervision. Now, after the Browning decision, there could be a joint employer relationship found even when the employers are not directly related, such as in the circumstance where a staffing company services the company. For the first time in known history, the NLRB looked to "indirect control" a key factor in deciding whether there is a joint employer relationship

What does this mean for you as an employer in the Lehigh Valley? According to employment attorney, Keely Jac Collins, the impact of this decision can be felt in various industries such as restaurants, retailers, manufacturers, construction companies, financial services providers, cleaning services, security companies, contractors, etc.

"If your business relies on a staffing agency, even for only seasonal help," Collins says, "you will need to revise your policies and practices to make sure that you do not have a joint employer relationship. With preparation and assistance from a skilled employment attorney, your business does not have to end key relationships at the risk of falling into another trap set by the expanding NLRB agenda."