



# Electronic Alert

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## **After Member Disqualifications: NLRB Vacates *Hy-Brand* on Joint Employer Rule** By Heather Fossity

On Monday, February 26, 2018, the National Labor Relations Board (NLRB) issued an Order vacating *Hy-Brand Industrial Contractors* and returning the standard for joint employment to the *Browning Ferris* standard for private unionized employers. This means that one or more companies are joint employers if they reserve the right to control the employment terms of another entity's employees. As detailed in our December 15, 2017 E-Alert, the joint employer test under *Hy-Brand Industrial Contractors* required actual exercise of direct and immediate control.

The Order arose out of Board Member Emanuel's disqualification from the proceeding. After *Hy-Brand*, the Board's Designated Agency Ethics Official determined that Member Emanuel should have recused himself. Meanwhile, John Ring's appointment to fill the empty Board seat is pending Senate approval. Stay tuned as Ring's approval will create a conservative majority on the Board, meaning more employer-friendly decisions to come.

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