**4.25 Miscellaneous Issues – Joint Employers**

It is not always clear whether the law considers someone an “employee,” and it is not always clear who the law considers someone’s “employer.” Some people, for example, perform services for others while remaining self-employed as independent contractors. Others are clearly employees. But it may not always be clear who is an employer of the employee. Sometimes an employee may have more than one employer at the same time.

So, in this case, you must decide: Was [name of plaintiff] [name of defendant]’s employee as well as an employee of [name of alleged other employer]? You should answer this question in light of the economic realities of the entire relationship between the parties based on the evidence.

Consider all the following factors to the extent you decide that each applies to this case:

 the nature and degree of control over the employee and who exercises that control;

 the degree of supervision, direct or indirect, over the employee’s work and who exercises that supervision;

 who exercises the power to determine the employee’s pay rate or method of payment;

 who has the right, directly or indirectly, to hire, fire, or modify the employee’s employment conditions;

 who is responsible for preparing the payroll and paying wages;

 who made the investment in the equipment and facilities the employee uses;

 who has the opportunity for profit and loss;

 the employment’s permanence and exclusiveness;

 the degree of skill the job requires;

 the ownership of the property or facilities where the employee works; and

 the performance of a specialty job within the production line integral to the business.

Consideration of all the circumstances surrounding the work relationship is essential. No single factor is determinative. Nevertheless, the extent of the right to control the means and manner of the worker’s performance is the most important factor.