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Congress proposes new joint employer standards: What it could mean for franchising

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After a decade of legal uncertainty, U.S. Rep. James Comer (R-KY) has proposed legislation to establish a clear, codified standard for what constitutes a joint employer under federal labor laws, offering clarity for businesses across the country. The Save Local Business Act (SLBA) would adopt the National Labor Relations Board's 2020 Joint Employer Rule, which required a showing of "substantial and immediate control" to establish joint employment.

If enacted, the SLBA would offer significant relief to franchised businesses by establishing a clear framework for determining joint employer status. The act would allow franchisors to guide and support franchisees on employment matters while mitigating the risks of unintended liability exposure. The International Franchise Association joined 72 other trade groups in a letter promoting the legislation's benefits.

Joint employment status and why it matters to the franchising system

The NLRB defines a joint employment relationship as existing where two or more entities share control, or are deemed by law to share control, over a worker's essential terms and conditions of employment. Other federal laws, such as the Fair Labor Standards Act, have embraced the NLRB's joint employer definition in their respective statutory schemes. When two entities are found to be acting as joint employers, they can be held jointly and severally liable for the employment practices of the other. The scope of liability could include unfair labor practices, wage and overtime violations, discrimination, infringement of collective bargaining rights, and more.

In the franchise context, franchisees often utilize a franchisor's support and assistance to identify and onboard essential employees for the establishment and operation of their franchise unit. This support can range from initial employee training and onboarding to ongoing employment policies and human resources support. These activities may fall within the "essential terms and conditions" of employment. Under the SLBA, franchisors will be able to continue providing necessary employment assistance while understanding the boundaries of joint employment standards.

Joint employer standard background

Since 2015, businesses have had to grapple with the changing standards for joint employer rules, causing major complications with labor law compliance. In a 2015 ruling, the NLRB adopted an unprecedented standard for what constitutes joint employment. The *Browning-Ferris Industries* decision permitted joint employer liability to extend to those who "indirectly control" or "reserve control" over others at the business. The *Browning-Ferris Industries* standard abandoned the traditional joint employer standards, which required a showing of "direct and immediate" control. Following the ruling, the U.S. Department of Labor revised the joint employer standards under the FLSA.

The NLRB later overruled the Browning-Ferris Industries decision and in 2017, offered guidance on joint employer status. In a 2017 decision, the NLRB stated there must be a showing of actual control over essential terms of another entity's employees, and in a manner that is "not limited and routine." However, it was not until 2020 when the NLRB and DOL re-adopted traditional joint-employer standards. The agencies, respectively, clarified that joint employer classification only exists where one possesses and exercises substantial direct and immediate control over one or more essential terms and conditions of another's employees. While the NLRB attempted to shift the framework again in 2023 back to the *Browning-Ferris Industries* standard, a federal court in Texas recently struck down the Rule.

Today, the standards for joint employment adopted under the 2020 rules mostly remain in effect. Claimants must generally show that an entity possesses and exercises substantial direct and immediate control over another entity's employment practices to hold a joint employer liable. This standard follows decades of employment policies and regulations predating the *Browning-Ferris Industries* decision. The SLBA would codify the 2020 rules and provide a clear framework for businesses moving forward.

How Saxton & Stump Can Help

At Saxton & Stump, our franchise and employment teams help franchisors and franchisees navigate the evolving landscape of joint employer regulations. We provide strategic counsel to minimize legal exposure, defend against joint employer claims, and ensure compliance with federal and state labor laws. Whether you are proactively reining in your operations or responding to ongoing disputes, our firm offers practical, industry-specific guidance to protect and strengthen your franchise system.

If you are a franchisor or franchisee with questions about the joint employer rules or how the proposed bill could change the rules if enacted, please contact any member of the Saxton & Stump Franchising, Distribution and Licensing Group.

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