Who's the Boss? Understanding the Joint Employer Rule

Center Forward Basics

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Overview

The joint employer rule is a foundational concept with far-reaching impacts in federal labor law. It determines when two separate business entities share legal responsibility for the same workers. For businesses with contracted labor or licensed relationships, the answer to that question carries significant consequences, shaping liability for labor law violations, obligations to bargain with unions, and exposure to enforcement actions. For workers, it determines where they can seek accountability for alleged wage and hour violations, inadequate safety standards, or violations of labor rights.

For decades, joint-employer determinations generally focused on whether an entity exercised direct and immediate control over workers' essential terms and conditions of employment. In 2015, the National Labor Relations Board (NLRB) broadened its interpretation to consider indirect and reserved control, beginning a decade of changes to the standard across administrations and the courts. Over the ensuing decade, the joint employer standard has changed five times over three administrations, creating sustained uncertainty for hundreds of thousands of businesses and tens of millions of workers whose employment relationships could be subject to shared responsibilities. This Basic will examine how the joint employer standard works, how certain business models, such as franchises and staffing agencies, are affected, and how Congress is now attempting to resolve a decade of changing administrative and judicial interpretations.

Center Forward Basics

Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

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Businesses Impacted by Joint Employer Standards

Any business model that creates a relationship between a lead company setting operational standards and a separate, nominal employer of the workers performing operations can be subject to shared responsibility for alleged labor violations or unfair practices. A **nominal employer** is an entity that formally or administratively hires and processes workers but has no actual day-to-day control over their work. This differs from the **actual employer**, who directs the work and is typically liable for workplace violations. Staffing agencies, the companies that host their workers (such as general contractors and subcontractors), and technology platforms that work with gig workers may also raise this question.

Another highly visible and common business model affected by joint employer and shared responsibility standards is the relationship between a franchisor and its franchisees. Franchise businesses are sometimes thought of as chains, recognized brand names with a network of retail locations across a state, region, or country, but they operate independently. Under a franchise model, the franchisor (for example, Subway or Planet Fitness) licenses its brand, products, systems, and operational standards to an independently owned local business, the franchisee.

In exchange for a licensing fee and royalties on earnings, the franchisee gains the right to operate under the franchisor's name and trademark, drawing on established operational practices and benefiting from a nationally recognizable brand. The franchisee employs workers at its location. They hire staff, set schedules, run daily operations, and manage the business. The franchisor sets standards that operators must follow to protect the brand's reputation and ensure uniformity across

independent businesses. The franchisor can require uniform menus, service protocols, safety procedures, and quality controls, but typically does not direct the employment relationship itself.

Franchises operate across sectors including food, hospitality, fitness, retail, and home services. In 2025, franchise establishments generated more than $936 billion in economic output and employed more than 8.8 million workers, making the treatment of franchise relationships under joint-employer standards economically significant.

What Does it Mean to Be a Joint Employer?

Under the National Labor Relations Act of 1935 (NLRA) and the Fair Labor Standards Act of 1938 (FLSA), a joint employer determination triggers shared legal obligations for both entities, and shared liability where an enforcing agency or court finds a violation of one of those statutes. Under the NLRA, if two entities are found to be joint employers, both must bargain with any union representing those workers and may be liable for unfair labor practices (read more on ULPs HERE) committed by either party. Both are also subject to union picketing and economic pressure in labor disputes. Under the FLSA, joint employers share liability for wage and hour violations.

The stakes of joint employer findings are substantial for both businesses and workers. From the business perspective, for example, an entity found to be a joint employer of its contractors' workers can face liability for labor law violations at any contractor location, even if it does not directly manage those employees. Businesses may also be compelled to bargain at a national level with unions representing workers at one or a few contractor locations within a network of up to thousands of labor contracts or franchises across states, rather than the union bargaining with the local owner-operator or direct employer. In the franchise space, when the broader standard is applied, franchisors have, in some cases, reduced support, guidance, employee manuals, training, and compliance assistance out of fear of joint employer liability, leading to inconsistent brand standards and throttled pro-worker benefits. The uncertainty of joint employer status also carries a cost. From 2015 to 2017, when a broader joint employer standard was in effect under the NLRB, research from Oxford Economics showed a 93% spike in litigation, resulting in an estimated $33.3 billion in lost economic output per year, including 376,000 fewer franchise jobs added.

From the perspective of some workers and labor advocates, broadened joint employment standards address different questions with different consequences, such as the right to collectively bargain or other employment protections, particularly with entities that possess economic leverage in the business relationship. Advocates argue that a national corporation setting operational terms to maintain brand consistency – such as limiting the suppliers or standardizing production processes – constrains franchisees' ability to independently amend wages or working conditions. Advocates argue that a narrow joint employer standard allows national corporations to exercise functional control over employment conditions while avoiding the full legal responsibility that comes with being an employer. They contend that the national franchisor or contracted employer of record holds real economic leverage in the business relationship and over workers.

Changing the Joint Employer Standard: The 2015 Browning-Ferris Case

The NLRA, enacted in 1935, does not define a joint employer standard. The doctrine developed instead out of common-law agency principles. Over fifty years of court rulings, a framework developed to consider companies jointly responsible for employees if the licensing or contracting entity exercised direct and immediate control over the essential terms of employment. "Direct and immediate control" included setting wages, hours, hiring, discipline, and supervision. Indirect influence, such as general oversight of branding and quality standards or a contractual right to exercise such control, was insufficient to establish joint-employer responsibility. That framework remained stable and consistently enforced for decades, governing multi-party business arrangements for most of a generation.

The understood standard for joint employer responsibility was expanded in 2015. Browning-Ferris Industries (BFI), a waste management company, contracted with a staffing agency, Leadpoint Business, to supply workers at a California recycling plant. A union seeking to represent those Leadpoint workers filed a case with the NLRB, arguing that Browning-Ferris should be

treated as their joint employer and compelled to bargain, citing BFI's operational control over the facility. BFI set shift schedules, productivity quotas, and quality standards. BFI also imposed conditions and pay caps on the workers Leadpoint directly hired. BFI did not itself hire, fire, or set pay rates, but the union argued that this degree of control over the work and its terms provided sufficient grounds for joint responsibility.

In a 3-2 decision, the NLRB sided with the union, adopting a broader interpretation than the one used over the preceding four decades. The Board held that a company could be deemed a joint employer if it held authority to control essential employment terms, even if that authority was indirect or had never been exercised. This standard included contractual rights to oversee productivity, set operating conditions, or reject workers, even if the company had never actually intervened in employment decisions. Business groups argued that the decision created uncertainty about whether routine brand standards and oversight could contribute to joint-employer liability, while labor advocates argued that considering indirect and reserved control better reflected the practical influence some companies exercise over workers' employment conditions.

Evolution of the Joint Employer Standard

The *Browning-Ferris* decision kicked off ten years of subsequent decisions and reversals that remain unresolved in 2026. In 2017, the NLRB under President Trump reversed the *Browning-Ferris* standard in the *Hy-Brand* decision, reinstating the direct and immediate control standard that had previously held. However, the Board was forced to vacate that decision on procedural grounds only months later, leaving the *Browning-Ferris* decision in place. In 2020, the NLRB issued a formal rule to settle the question, rather than establishing a new precedent through adjudication. The 2020 rule codified a narrower standard, establishing that a company is a joint employer only if it possesses and exercises substantial direct and immediate control over one or more essential employment terms, such as wages, benefits, hours, hiring, discharge, discipline, or supervision.

Under President Biden, the NLRB later moved back in the opposite direction. In October 2023, the Board finalized another new rule that went beyond the *Browning-Ferris* standard, eliminating the requirement that the control be substantial, direct, and immediate. It reinstated the indirect and reserved control factors of *Browning-Ferris* and applied them to an enumerated list of seven essential terms and conditions of employment. Under the new rule, contractual authority over the assignment of duties, safety standards, and more, even if never exercised, could constitute joint employer status.

Business groups and trade associations challenged the rule, and in March 2024, the U.S. District Court for the Eastern District of Texas vacated it entirely. The court found the rule "contrary to law and arbitrary and ~~capricious," holding that its~~ reliance on unexercised indirect control lacked coherent limits and could potentially expose "virtually every entity that contracts labor." The 2023 rule never took effect.

On February 26, 2026, the NLRB, under the second Trump Administration, formally withdrew the 2023 rule and reinstated the 2020 standard. That provided greater continuity than had existed since the *Browning-Ferris* decision, although the rule remains subject to litigation. A challenge to the 2020 rule from the Service Employees International Union (SEIU) remains pending before the U.S. Court of Appeals for the D.C. Circuit. Depending on the litigation's outcome, the rule could be overturned.

The joint employer standard administered by the Department of Labor (DOL) under the FLSA has followed a distinct but mirrored track from that of the NLRB. DOL applies an "economic realities" test to determine joint employer status. This multi-factor assessment has historically been more likely to find joint employment. Under the first Trump Administration, the DOL issued a formal rule in 2020 that narrowed the test to four factors: whether a potential joint employer hires or fires the employee, substantially supervises and controls work schedules or conditions, determines the rate and method of payment, and maintains employment records. Federal court partially vacated the rule a few months later, and the Biden Administration rescinded it in 2021 without issuing a replacement, effectively returning to the broader "economic realities" test.

On April 22, 2026, the second Trump Administration's DOL proposed a new rule to reform the economic realities test and establish a nationwide framework for determining joint employer status under the FLSA, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act. The proposed rule revives the four-factor test from the 2020 rule, but with substantial modifications to allow a broader interpretation of the standard and to respond to recent court cases. Most notably, the 2026 rule reintroduces "reserved control" as a relevant factor, meaning the company's contractual but unexercised control over essential employment conditions. Reserved control is introduced as a consideration, but with the caveat that the exercise of control should be the primary determining factor. The new rule also introduces "horizontal joint employers," determining that two business entities are sufficiently associated to share responsibility if there is an arrangement to share employees' services, one employer acts directly or indirectly in the interest of the other, or if the two entities share control of the employee (including in cases where one employer is controlled by the other associated business). The public comment period for the new rule closed on June 22, 2026.

A Line of Legislative Solutions

For the last several Congresses, Congress has considered the Save Local Business Act and the Protecting the Right to Organize Act ("PRO Act"). The Save Local Business Act was reintroduced in the 119th Congress by Rep. James Comer (R-KY) as H.R. 4366, and the PRO Act by Rep. Bobby Scott (D-VA) as H.R. 20 in the House, and by Sen. Bernie Sanders (I-VT) as S. 852. The former aims to clarify joint-employment status by establishing a defined, narrower standard for direct and immediate control of employees. On the other hand, the PRO Act is a comprehensive labor law overhaul that would, among other things, codify the *Browning-Ferris* standard of indirect or potential control, expanding courts' ability to find joint employment status. Both bills have been voted on mostly along partisan lines, with most Democrats voting in favor of the PRO Act and most Republicans voting in favor of the Save Local Business Act.

A bipartisan group of lawmakers has coalesced around separate legislation addressing joint-employer standards specifically for franchise businesses. In September 2025, Rep. Kevin Hern (R-OK) and Rep. Don Davis (D-NC) introduced the American Franchise Act (H.R. 5267), explicitly to end a decade of shifting administrative and judicial interpretations by establishing a statutory standard for determining joint employer responsibility. In December 2025, Sen. Roger Marshall (R-KS) and Sen. Angus King (I-ME) introduced the Senate companion bill (S. 3525). The House bill was endorsed by the Problem Solvers Caucus and touted the support of more than 100 national and state businesses, advocacy groups, and trade associations. As of June 2026, the Senate bill has four additional Republican cosponsors, and the House bill has 129 bipartisan cosponsors.

The American Franchise Act (AFA) would amend both the NLRA and FLSA to establish that a franchisor may only be considered a joint employer of an individual franchisee's employees if it both holds and exercises substantial direct and immediate control over one or more essential conditions of employment. The bill outlines essential conditions, including wages, benefits, scheduling, hiring, discharge, discipline, supervision, and direction, and aligns with the 2020 NLRB rule, consistent with the framework that governed joint employer determinations before 2015. The bill also includes detailed definitions of what constitutes direct and immediate control in each category, aiming to draw clear lines between regular franchisor activity to protect a national brand standard and genuine employment control. Under the AFA, setting operating hours, minimum staffing levels, or issuing training materials does not establish joint employer status. The bill applies prospectively, would not affect ongoing proceedings, and does not cover independent contractors or other non-franchise business models.

Supporters of the AFA argue the law would codify what is already the industry's operating standard, while also giving it a statutory footing that a future administration cannot undo through rulemaking or a single court decision. Franchise advocates have stressed that the franchise ~~model's success~~ depends on a clear separation between brand oversight and direct employee management, and those groups cite research suggesting that regulatory uncertainty reduced franchise investment and job growth.

Critics led by the AFL-CIO and other labor advocacy groups argue the AFA would leave nearly 9 million franchise workers with fewer protections against corporate misconduct. The AFL-CIO released a public letter opposing the bill, claiming the narrow

standard would let franchisors structure contracts that give them functional control over working conditions while escaping accountability when those conditions lead to wage theft, safety violations, or other harms. Opponents also contend the AFA is unnecessary, given that the 2020 rule is already the industry's effective operating model, and that locking the current standard into statute restricts future administrations' abilities to respond to evolving labor market conditions or needs.

Conclusion

The case for a legislative resolution of the joint-employer debate is, in some ways, separable from the debate over the determining standard itself. The joint employer standard has changed five times in ten years through NLRB decisions, Board or DOL rulemaking, and court reversals, creating sustained uncertainty for both business operators and labor advocates pursuing lawsuits or remedies for labor violations. Regulatory rules often take months or years to be finalized and can be reversed by the next administration, and court cases can be appealed for years, only to be reversed again. A statutory solution would provide greater stability than agency rulemaking but would also make future changes dependent on congressional action. The deeper tension between regulatory flexibility and legal certainty will persist even if one of the current legislative solutions passes, since the current proposals do not pre-empt varying state definitions. As of publication, the House version of the American Franchise Act has been reported out of the Education and Workforce Committee and awaits floor consideration, while the Senate companion remains before the HELP Committee.

Links to Other Resources

- AFL-CIO - Letter Opposing Legislation That Is Anti-Worker, Anti-Union, and Anti-Small Business
- American Compass - Joint Employer Standard: Restore Responsibility in Fissured Workplaces
- Congressional Research Service - Joint Employment and the National Labor Relations Act
- Coalition to Save Local Businesses - The American Franchise Act: Myth vs. Fact
- Department of Labor - Notice of Proposed Rule, April 2026
- Economic Policy Institute - Comment on DoL's Proposed Joint Employer Rule
- International Franchise Association - Consequences of Joint Employer Rule on Franchised Businesses
- International Franchise Association - Franchising Outpaces the U.S. Economy
- Jackson Lewis - DOL Rethinks Joint Employer Standard: Proposal Revisits, Revises 2020 Rule
- National Employment Law Project – The Browning-Ferris Decision Explained
- National Employment Law Project - 'Joint Employment' Keeps Corporations Accountable When They Outsource Work