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New Legislation Drastically Limits the Definition of a Joint Employer; Franchisors Rejoice

By Charles Welcome

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On November 7, 2017, the U.S. House of Representatives passed a bill, called the "Save Local Business Act," which redefines "joint employer" under the National Labor Relations Act and the Fair Labor Standards Act, clearing the way to reverse a 2015 ruling by the National Labor Relations Board (NLRB) that held companies liable for labor law violations committed by their subcontractors by expanding the definition of a 'joint employer.' Trade organizations, including the U.S. Chamber of Commerce, the International Franchise Association, and the National Restaurant Association, have fought back against the 2015 NLRB ruling through media campaigns and lobbying efforts. The franchise community alone sent over 113,000 emails to federal officials.

Opponents of the bill claim it will rob workers of their rights and protect large corporations from liability for standards and practices that the larger companies mandate. Supporters, on the other hand, predict a boon for emerging small businesses, including franchises.

According to the bill's opponents, no franchisor has been held to be a 'joint employer' by the NLRB to date, even after the 2015 ruling. However, the Save Local Business Act removes any doubt as to whether a franchisor could be considered a joint employer of a franchisee, meaning any labor disputes between employees of the franchisee and the franchisee would not implicate the franchisor.

Workers' rights advocates contend that the bill would harm workers, who are unable to effectively collectively bargain, and small businesses, who will be left 'holding the bag' with respect to labor lawsuits filed by employees, even where a large corporation controls their business practices by, for example, setting employees' schedules. While such contentions may have merit, the Save Local Business Act would also limit labor law disputes to those employers that have direct control over the standards and practices applied to their employees,

potentially limiting frivolous lawsuits attempting to cash in against a large company.

Just as the 2015 NLRB ruling quickly made waves within the franchise community, so too will the Save Local Business Act. Franchisors may be reassured by the bill's impact on their potential liabilities. Franchisees, on the other hand, may have concerns where the Franchisor's system and standards may cause them to run afoul of labor laws. All parties should discuss the bill's implications with their advisors.