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U.S. GOVERNMENT
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119TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
119–802

AMERICAN FRANCHISE ACT

SEPTEMBER 8, 2026.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALBERG, from the Committee on Education and Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5267]

The Committee on Education and Workforce, to whom was referred the bill (H.R. 5267) to preserve the franchise business model, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Franchise Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) A franchise is a commercial relationship under which a franchisee acquires the right to operate an independent business that offers, sells, or distributes goods or services using a franchisor's system of operations, which typically includes the franchisor's business system and marketing plan, and its service mark, trademark, trade dress, or trade name.

(2) To protect the integrity of its system of operations, a franchisor must set and enforce uniform quality, marketing, and operational standards that govern its use. Doing so helps maintain consistency and uniformity in the nature and quality of the goods and services distributed under the franchisor's trademarks. That consistency and uniformity, in turn, help ensure that consumer expectations are satisfied, increase the value of the franchisor's brand, and enhance the recognition and profitability of individual franchises.

(3) Although franchisees must comply with these standards, franchisees are independent business owners. It is the franchisee who determines how to implement the franchisor's standards, controlling on a day-to-day basis the operations of its franchise and its labor relations.

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(4) The economic impact of this business model has been profound. According to a September 2023 report from Oxford Economics, in 2022, the economic output of franchise establishments in the United States was approximately $825,000,000,000. During that year, franchises employed approximately 5 percent of all workers in the United States, which was approximately 8,400,000 workers.

(5) Inconsistent and expansive views of what constitutes a "joint employer" have impacted the viability of franchising by creating joint employer liability based on the franchisor's exercise of control that is inherent in franchise relationships.

SEC. 3. CLARIFICATION OF JOINT EMPLOYMENT FOR FRANCHISING.

(a) NATIONAL LABOR RELATIONS ACT.—The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following:

"SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR FRANCHISING.

"(a) DEFINITIONS.—In this section:

"(1) DIRECT AND IMMEDIATE CONTROL.—The term 'direct and immediate control' means the following with respect to each respective essential term and condition of employment:

"(A) WAGES.—A franchisor exercises direct and immediate control over wages if it actually determines the wage rates, salary, or other rate of pay that is paid to individual employees of a franchisee or job classifications of employees of a franchisee.

"(B) BENEFITS.—A franchisor exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to a franchisee's employees. Such direct and immediate control—

"(i) includes selecting the benefit plans (such as health insurance plans and pension plans) or level of benefits provided to a franchisee's employees; and

"(ii) does not include permitting a franchisee, under an arm's-length contract, to participate in a benefits plan of the franchisor.

"(C) HOURS OF WORK.—A franchisor exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of a franchisee's employees. Such direct and immediate control does not include—

"(i) establishing a franchisee's operating hours; or

"(ii) establishing minimum staffing levels to satisfy the franchise's service standards.

"(D) HIRING.—A franchisor exercises direct and immediate control over hiring if it actually determines which particular employees will be hired or which employees will not be hired. Such direct and immediate control does not include—

"(i) encouraging, recommending, or requesting changes in staffing levels to accomplish tasks; or

"(ii) setting minimal recruiting and hiring standards, such as those required by law, for consumer or employee safety, or for brand protection.

"(E) DISCHARGE.—A franchisor exercises direct and immediate control over discharge if it actually decides to terminate the employment of an employee of a franchisee. Such direct and immediate control does not include—

"(i) bringing misconduct or poor performance to the attention of a franchisee that makes the actual discharge decision;

"(ii) expressing a negative opinion of a franchisee's employee; or

"(iii) setting minimal standards of performance or conduct, such as those required by law, for consumer or employee safety, or for brand protection.

"(F) DISCIPLINE.—A franchisor exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline a franchisee's employee. Such direct and immediate control does not include—

"(i) bringing misconduct or poor performance to the attention of a franchisee that makes the actual disciplinary decision;

"(ii) expressing a negative opinion of a franchisee's employee;

"(iii) refusing to allow a franchisee's employee to perform work under a franchise offer or contract; or

"(iv) setting minimal standards of performance or conduct, such as those required by law, for consumer or employee safety or for brand protection.

"(G) SUPERVISION.—A franchisor exercises direct and immediate control over supervision by consistently and directly instructing a franchisee's em-

ployees how to perform their work or by actually issuing employee performance appraisals. Such direct and immediate control does not include—

"(i) providing instructions to a franchisee's employees that—

"(I) are limited and routine; and

"(II) consist primarily of telling a franchisee's employees what work to perform, or where and when to perform the work, but not how to perform the work;

"(ii) setting brand standards for the performance of the work;

"(iii) offering training materials (including training demonstrations) for a franchisee to use in training the employees of the franchisee; or

"(iv) establishing minimum training requirements for the employees of a franchisee.

"(H) DIRECTION.—A franchisor exercises direct and immediate control over direction by assigning particular employees of a franchisee their individual work schedules, positions, and tasks. Such direct and immediate control does not include offering resources and tools for a franchisee to consider using to direct the work schedules, positions, and tasks of the employees of the franchisee.

"(2) ESSENTIAL TERMS AND CONDITIONS OF EMPLOYMENT.—The term 'essential terms and conditions of employment' means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.

"(3) FRANCHISE; FRANCHISEE; FRANCHISOR.—The terms 'franchise', 'franchisee', and 'franchisor' have the meanings given such terms in section 436.1 of title 16, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(4) SUBSTANTIAL DIRECT AND IMMEDIATE CONTROL.—The term 'substantial direct and immediate control'—

"(A) means direct and immediate control that has a regular or continuous consequential effect on an essential term and condition of employment of a franchisee's employees; and

"(B) does not include direct and immediate control that is only exercised on a sporadic, isolated, or de minimis basis.

"(b) JOINT EMPLOYMENT.—For the purposes of this Act, a franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor possesses and exercises substantial direct and immediate control over one or more essential terms and conditions of employment of the employees of the franchisee.".

(b) FAIR LABOR STANDARDS ACT OF 1938.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by adding at the end of the following:

"SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR FRANCHISING.

"(a) IN GENERAL.—For purposes of this Act, a franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor meets the criteria for a joint employer with a franchisee under section 20 of the National Labor Relations Act, except that, for purposes of determining joint-employer status under this Act, the terms 'employee' and 'employer' referenced in section 20 of the National Labor Relations Act shall have the meanings given such terms in section 3 of this Act.".

"(b) DEFINITIONS.—In this section, the terms 'franchisor' and 'franchisee' have the meanings given such terms in section 20(a) of the National Labor Relations Act.".

SEC. 4. APPLICABILITY.

This Act, and the amendments made by this Act, shall not apply to any proceeding that is commenced before the date of enactment of this Act.

PURPOSE

H.R. 5267, *American Franchise Act*, amends the *National Labor Relations Act* (NLRA) and *Fair Labor Standards Act* (FLSA) to provide a standard for determining whether a joint employment relationship exists between a franchisor and franchisee.

COMMITTEE ACTION

114TH CONGRESS

First Session—Hearings

On August 25, 2015, the Subcommittee on Health, Employment, Labor, and Pensions (HELP) held a field hearing titled "Redefining

'Employer' and the Impact on Alabama's Workers and Small Business Owners" in Mobile, Alabama. Witnesses were Mr. Marcel Debruge, Burr and Forman LLP, Birmingham, Alabama; Mr. Chris Holmes, CEO, CLH Development Holdings, Tallahassee, Florida; and Col. Steve Carey, Owner and Operator, CertaPro Painters of Mobile and Baldwin Counties, Daphne, Alabama, testifying on behalf of the Coalition to Save Local Businesses and the International Franchise Association. Witnesses testified that the new joint-employer standard would threaten the independence of small businesses in Alabama and deter franchisors from licensing new franchisees.

On August 27, 2015, the HELP Subcommittee held a field hearing titled "Redefining 'Employer' and the Impact on Georgia's Workers and Small Business Owners" in Savannah, Georgia. Witnesses were Mr. Jeffrey M. Mintz, Shareholder, Littler Mendelson, P.C., Atlanta, Georgia; Mr. Kalpesh "Kal" Patel, President and COO, Image Hotels, Inc., Pooler, Georgia; Mr. Alex Salgueiro, Savannah Restaurants Corp., Savannah, Georgia; and Mr. Fred Weir, President, Meadowbrook Restaurant Company Inc., Cumming, Georgia, testifying on behalf of the Coalition to Save Local Businesses and the International Franchise Association. Witnesses testified that the new joint-employer standard would hurt small business growth in Georgia and create barriers to entry for potential franchise owners.

On September 29, 2015, the HELP Subcommittee held a legislative hearing on H.R. 3459 (114th Congress), *Protecting Local Business Opportunity Act*. Witnesses were Mr. Ed Braddy, President, Winlee Foods, LLC, Timonium, Maryland, testifying on behalf of himself and the National Franchisee Association; Mr. Kevin Cole, CEO, Enniss Electric Company, Manassas, Virginia, testifying on behalf of the Independent Electrical Contractors; Mr. Charles Cohen, Senior Counsel, Morgan, Lewis & Bockius, LLP, Washington, D.C.; Ms. Mara Fortin, President and CEO, Nothing Bundt Cakes, San Diego, testifying on behalf of herself and the Coalition to Save Local Businesses; Mr. Michael Harper, Professor, Boston University School of Law, Boston, Massachusetts; and Dr. Anne Lofaso, Professor, West Virginia University College of Law, Morgantown, West Virginia. Witnesses testified that H.R. 3459 would restore the joint-employer standard that had worked well for workers and business owners for decades and would protect opportunities for small business growth.

Legislative Action

On September 9, 2015, then-Committee on Education and the Workforce (Committee) Chairman John Kline (R–MN) introduced H.R. 3459 (114th Congress), *Protecting Local Business Opportunity Act*, with Representatives David P. Roe (R–TN), Tim Walberg (R–MI), Virginia Foxx (R–VA), Todd Rokita (R–IN), Joe Wilson (R–SC), Hunter D. Duncan (R–CA), Glenn Thompson (R–PA), Matt Salmon (R–AZ), Brett Guthrie (R–KY), Lou Barletta (R–PA), Joseph J. Heck (R–NV), Luke Messer (R–IN), Bradley Byrne (R–AL), Earl L. "Buddy" Carter (R–GA), Mike Bishop (R–MI), Glenn Grothman (R–WI), Steve Russell (R–OK), Carlos Curbelo (R–FL), Rick W. Allen (R–GA), Steve Chabot (R–OH), Blaine Luetkemeyer (R–MO), Vicky Hartzler (R–MO), Jason Smith (R–MO), Cresent Hardy (R–NV),

and Stephen Knight (R–CA) as original cosponsors. Recognizing the threat to small businesses posed by the National Labor Relations Board's (NLRB) August 2015 decision in *Browning-Ferris Industries of California, Inc. (Browning-Ferris)*, the legislation amended the NLRA to restore the long-held standard that two or more employers can only be considered joint employers for purposes of the NLRA if each shares and exercises control over essential terms and conditions of employment and such control over these matters is actual, direct, and immediate.

On October 28, 2015, the Committee considered H.R. 3459 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 21–15. Representative Carter offered an amendment in the nature of a substitute, making a technical change to the bill, which was adopted by voice vote.

115TH CONGRESS

First Session—Hearings

On February 14, 2017, the HELP Subcommittee held a hearing titled "Restoring Balance and Fairness to the National Labor Relations Board." Witnesses criticized decisions of the NLRB during the Obama administration, including the expanded joint-employer standard. Witnesses were Ms. Reem Aloul, BrightStar Care of Arlington, Arlington, Virginia, testifying on behalf of the Coalition to Save Local Businesses; Ms. Susan Davis, Partner, Cohen, Weiss and Simon, LLP, New York; Mr. Raymond J. LaJeunesse, Jr., Vice President, National Right to Work Legal Defense and Education Foundation, Springfield, Virginia; and Mr. Kurt G. Larkin, Partner, Hunton & Williams LLP, Richmond, Virginia.

On July 12, 2017, the Committee held a hearing titled "Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship." Witnesses were Mr. Michael Harper, Professor, Boston University School of Law, Boston; Mr. Richard Heiser, Vice President, FedEx Ground Package System, Inc., Chicago; Mr. G. Roger King, Senior Labor and Employment Counsel, HR Policy Association, Washington, D.C.; Mr. Jerry Reese II, Director of Franchise Development, Dat Dog, New Orleans, testifying on behalf of the Coalition to Save Local Businesses; Ms. Catherine K. Ruckelhaus, General Counsel, National Employment Law Project, New York; and Ms. Mary Kennedy Thompson, Chief Operating Officer of Franchise Brands, Dwyer Group, Waco, Texas, testifying on behalf of the International Franchise Association. Witnesses testified about the importance of reining in expanded joint-employer standards.

On September 13, 2017, the HELP and Workforce Protections subcommittees held a joint legislative hearing on H.R. 3441 (115th Congress), *Save Local Business Act*. Witnesses were Mr. Zachary D. Fasman, Partner, Proskauer Rose LLP, New York; Ms. Tamra Kennedy, President, Twin Cities T.J.'s Inc., Roseville, Minnesota, testifying on behalf of the Coalition to Save Local Businesses; Mr. Granger MacDonald, Chief Executive Officer, The MacDonald Companies, Kerrville, Texas, testifying on behalf of the National Association of Home Builders; and Mr. Michael Rubin, Partner, Altshuler Berzon LLP, San Francisco. Witnesses testified that H.R.

3441 clarifies the joint-employer standard used under both the NLRA and FLSA and benefits workers and business owners.

Legislative Action

On July 27, 2017, then-Subcommittee on Workforce Protections Chairman Bradley Byrne (R–AL) introduced H.R. 3441, *Save Local Business Act*, with 29 original cosponsors. The bill amended the NLRA and FLSA to provide that two or more employers can only be considered joint employers if each shares and exercises control over essential terms and conditions of employment and such control over those matters is actual, direct, and immediate.

On October 4, 2017, the Committee considered H.R. 3441 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 23–17. Representative Byrne offered an amendment in the nature of a substitute, making technical changes to the bill. The amendment was adopted by voice vote.

117TH CONGRESS

Legislative Action

On May 13, 2021, Representative James Comer (R–KY) introduced H.R. 3185 (117th Congress), *Save Local Business Act*, with 54 original cosponsors. The bill set the standard by which a worker may be considered employed by a joint employer under the NLRA and FLSA.

118TH CONGRESS

First Session—Hearing

On December 13, 2023, the HELP Subcommittee held a hearing titled "Protecting Workers and Small Businesses from Biden's Attack on Worker Free Choice and Economic Growth" to examine solutions to protect small businesses, including regarding the joint-employer standard. Witnesses were Mr. G. Roger King, Senior Labor and Employment Counsel, HR Policy Association, Washington, D.C.; Mr. Matthew Haller, President and CEO, International Franchise Association, Washington, D.C.; Mr. F. Vincent Vernuccio, President, Institute for the American Worker, Hamilton, Virginia; and Mr. Richard Griffin, Of Counsel, Bredhoff and Kaiser, Washington, D.C.

Legislative Action

On April 25, 2023, Representative James Comer (R–KY) introduced H.R. 2826 (118th Congress), *Save Local Business Act*, with 61 original cosponsors. The bill set the standard by which a worker may be considered employed by a joint employer under the NLRA and FLSA.

119TH CONGRESS

First Session—Hearing

On June 11, 2025, the HELP Subcommittee held a hearing titled "Restoring Balance: Ensuring Fairness and Transparency at the NLRB," which examined the NLRB's joint-employer standard, among other topics. Witnesses were Mr. G. Roger King, Senior

Labor and Employment Counsel, HR Policy Association, Washington, D.C.; Mr. F. Vincent Vernuccio, President, Institute for the American Worker, Hamilton, Virginia; Mr. Aaron Solem, Staff Attorney, National Right to Work Legal Defense Foundation, Springfield, Virginia; and Ms. Jennifer Abruzzo, Senior Advisor to the President, Communications Workers of America, Washington D.C.

Legislative Action

On July 14, 2025, Representative James Comer (R–KY) introduced H.R. 4366, *Save Local Business Act*, which sets the standard by which a worker may be considered employed by a joint employer under the NLRA and FLSA. On July 23, 2025, the Committee considered H.R. 4366 in legislative session and reported it favorably, as amended, to the House of Representatives by a vote of 20–16. The Committee considered the following amendments to H.R. 4366:

1. Representative Robert F. Onder (R–MO) offered an amendment in the nature of a substitute, making technical changes to the bill. The amendment was adopted by voice vote.

2. Representative Alma S. Adams (D–NC) offered an amendment to prevent the provision in the bill amending the definition of employer under the FLSA from going into effect in cases of unlawful child labor under the FLSA. The amendment failed by a recorded vote of 16–20.

On September 10, 2025, Representative Kevin Hern (R–OK) introduced H.R. 5267, *American Franchise Act*, which was referred solely to the Committee on Education and Workforce and had 13 original cosponsors. The bill amends the NLRA and FLSA to require that a franchisor may only be considered a joint employer of the employees of a franchisee if the franchisor exerts substantial direct and immediate control over one or more of the essential terms and conditions of employment, which the bill defines as meaning wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. On July 21, 2026, the Committee considered H.R. 5267 in legislative session and reported it favorably, as amended, to the House of Representatives by a vote of 18–15. The Committee considered the following amendments to H.R. 5267:

1. Delegate James C. Moylan (R–Guam) offered an amendment in the nature of a substitute, making technical changes to the bill. The amendment was adopted by voice vote.

2. Ranking Member Robert C. "Bobby" Scott (D–VA) offered an amendment to establish the right of franchisees to sue franchisors for damages if the franchisee is found liable for NLRA or FLSA violations due to franchisor-mandated policies or guidance. The amendment failed by a recorded vote of 15–18.

3. Ranking Member Scott offered an amendment to strike the bill's definition of joint employment under the NLRA. The amendment also replaced the bill's definition of joint employment under the NLRA to consider as relevant reserved authority to control terms and conditions of employment. The amendment failed by a recorded vote of 15–18.

COMMITTEE VIEWS

INTRODUCTION

The joint-employer standard can impact any business that contracts with another business, such as franchisors and franchisees, contractors and subcontractors, suppliers, and other businesses. The test for determining when two or more entities are to be considered joint employers has fluctuated with presidential administrations for the last decade, sowing chaos for job creators. During the first Trump administration, the NLRB and Department of Labor (DOL) reversed disastrous Obama-era policies regarding the joint-employer standard and promulgated commonsense rules that limited liability for job creators.[1] However, the Biden-Harris NLRB replaced the first Trump administration NLRB's joint-employer final rule, destabilizing this area of the law again. H.R. 5267, *American Franchise Act*, would stabilize this area of the law for the franchise industry.

THE NLRB JOINT EMPLOYER STANDARD

The NLRA's purpose is to protect the rights of most private-sector employees to organize and collectively bargain with their employers, or to refrain from those activities; to minimize industrial strife; and to curtail certain behaviors of labor and management deemed harmful to the general welfare of workers, businesses, and the economy overall. The NLRB is an independent federal agency established by the NLRA to fulfill two principal functions: (1) to determine whether employees wish to be represented by a union and (2) to prevent and remedy employer and union unlawful acts.

From 1984 to 2015, the NLRB determined whether two separate entities should be considered joint employers by analyzing whether the entities shared control over or co-determined the essential terms and conditions of employment.[2] Essential terms and conditions of employment could include hiring, firing, discipline, supervision, and direction of employees. Prior to 2015, each entity's control over these employment matters needed to be "actual, direct, and immediate" for the Board to find two or more entities to be joint employers.[3]

In 2015, the NLRB issued its decision in *Browning-Ferris Industries*, radically revising the joint-employer standard.[4] Under this standard, companies sharing indirect or potential control over another entity's workforce may be considered joint employers. Practically, an entity could be held liable for the decisions of another entity—whether or not the first entity was even aware of the second entity's decisions and activities.

During the first Trump administration, the NLRB promulgated a rule restoring the historic, direct-control standard and effectively

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[1] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11,184 (Feb. 26, 2020); Joint Employer Status under the Fair Labor Standards Act, 86 Fed. Reg. 40,939 (Jan. 16, 2020).

[2] TLI, Inc., 271 NLRB 798, 798–99 (1984), *overruled by* Browning-Ferris Indus. (BFI), 362 NLRB No. 186 (2015).

[3] *See* Airborne Express, 338 NLRB 597, 597 n.1 (2002) ("[The] essential element in [joint employer] analysis is whether a putative joint employer's control over employment matters is direct and immediate."); AM Prop. Holding Corp., 350 NLRB 998, 1000 (2007) ("In assessing whether a joint employer relationship exists, the Board . . . looks to the actual practice of the parties.").

[4] BFI, 362 NLRB No. 186 (2015).

overruled *Browning-Ferris*.[5] In 2023, however, the Biden-Harris NLRB issued a final rule of its own,[6] largely reviving the Obama-era Browning-Ferris standard.[7] The 2023 Biden-Harris rule rescinded and replaced the Trump NLRB's joint-employer rule.[8]

Under the 2023 Biden-Harris NLRB rule, a joint-employer relationship is established when employers codetermine, whether directly or indirectly, employees' essential terms and conditions of employment.[9] In other words, under the Biden-Harris NLRB rule, an entity can be considered a joint employer even if it does not actually control the employees involved. Any entity that exercises or even reserves the right to exercise control, even indirect control, over at least one essential term of employment is a joint employer under this rule. As a practical matter, the 2023 Biden-Harris NLRB rule treats most entities that contract for labor as joint employers because nearly every contract for third-party labor includes terms that bear on at least one of the specified essential terms and conditions of employment. This sweeping joint-employer rule was vacated by a Texas federal district court in March 2024.[10] In July 2024, the NLRB withdrew its appeal of the district court's decision vacating the Biden-Harris NLRB rule.[11] On February 27, 2026, the NLRB issued a final rule for determining joint-employer status under the NLRA, formally rescinding the 2023 Biden rule and reinstating the Trump 2020 rule.[12]

THE JOINT-EMPLOYER STANDARD UNDER THE FLSA

The FLSA is the primary federal statute establishing standards for minimum wage, overtime pay, child labor, recordkeeping, and other wage-and-hour standards covering over 140 million individuals, including most private and public-sector employees.[13] Congress delegates authority to DOL to interpret the FLSA via regulations, but state wage-and-hour laws are not preempted by the FLSA provided the states' laws are more protective of employees.[14] The FLSA also provides for enforcement actions by DOL and private litigation brought by employees against employers. The resulting decisions of federal courts also shape the law.

The threat of sweeping joint-employer standards under the FLSA was addressed by Mr. Zachary Fasman, Partner at Proskauer Rose, LLP, when he testified before the HELP Subcommittee in 2017. Describing the legal landscape, Mr. Fasman noted:

> While there have been numerous decisions on joint employer status under the FLSA, there is no commonly accepted test for joint employer liability under the statute. Some courts rely upon a four factor "economic reality" test; others add as many as six or eight factors to that test, oth-

[5] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11,184 (Feb. 26, 2020).
[6] Standard for Determining Joint-Employer Status, 88 Fed. Reg. 53,946 (Oct. 27, 2023).
[7] BFI, 362 NLRB No. 186 (2015).
[8] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11,184 (Feb. 26, 2020).
[9] Standard for Determining Joint Employer Status, 88 Fed. Reg. 73,946 (Oct. 27, 2023).
[10] Chamber of Com. of U.S. v. NLRB, 723 F. Supp. 3d 498 (E.D. Tex. 2024).
[11] https://news.bloomberglaw.com/daily-labor-report/labor-board-abandons-bid-to-revive-joint-employer-regulation.
[12] https://www.federalregister.gov/documents/2026/02/27/2026-03955/withdrawal-of-2023-standard-for-determining-joint-employer-status.
[13] 29 U.S.C. §§ 201–262.
[14] *Id.* § 218.

> ers consider whether the putative joint employer can discipline or discharge an employee, while new and novel—and different—tests continue to arise in federal courts across the country. Employers with multi-state operations have no idea what standards will apply to their operations, or when they may be held responsible—after the fact, if the NLRB's Browning-Ferris standards are applied—for another employer's wage and payroll practices.[15]

Federal courts across the country have developed various tests for determining whether two entities have a joint-employer relationship under the FLSA. H.R. 5267 will give franchisors and franchisees the confidence they need to start and expand their enterprises across state lines without fear.

CONSEQUENCES OF BROAD, SHIFTING JOINT EMPLOYER STANDARDS

Mr. Vincent Vernuccio, President of the Institute for the American Worker, testified before the HELP Subcommittee in June 2025, about the pernicious effects of the shifting legal standards for determining joint-employer status:

> The constant legal whiplash has created significant instability for employers, especially small businesses, and workers. Businesses now face uncertainty over when they might be held liable for workers they do not hire, supervise, or compensate—making it harder to confidently enter partnerships, grow, or invest in workforce development. Industries that rely on franchising, subcontracting, or staffing are particularly vulnerable.[16]

Nowhere do the broad and shifting joint-employer standards do more harm than in the context of the franchise industry. In his testimony to the HELP Subcommittee in December 2023, Mr. Matthew Haller, President of the International Franchise Association (IFA), described the franchise model:

> A franchisee is first a local business, distinguished from other local businesses because it licenses the branding and operational processes of a franchisor, or brand company, while operating independently in a set location. The franchise model provides a smoother path to entrepreneurship than developing an independent business, with franchisors sharing confidential and proprietary information regarding site selection and development strategies, training programs and branding campaigns to facilitate faster speed to market for franchisees in addition to providing continuing operational support throughout the long-term franchise relationship. The local owner, or franchisee, is responsible for hiring staff, organizing schedules, managing payroll and all daily operational tasks—and critically, creating a distinct company culture and direct relationship with em-

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[15] *The Save Local Business Act: Hearing on H.R. 3441 Before the Subcomm. on Health, Emp., Lab., & Pensions and the Subcomm. on Workforce Protections of the H. Comm. on Educ. & the Workforce*, 115th Cong. 54 (2017) (statement of Zachary D. Fasman, Partner, Proskauer Rose, LLP).

[16] *Restoring Balance: Ensuring Fairness and Transparency at the NLRB: Hearing Before the Subcomm. on Health, Emp., Lab. & Pensions of the H. Comm. on Educ. & Workforce,* 119th Cong. 44 (2025) (statement of F. Vincent Vernuccio, President, Inst. for the Am. Worker).

> ployees—as well as local sales and marketing. The value of franchising lies in a strategic balance in the relationship between a franchisor and franchisee: the independence of a franchisee to manage its day-to-day operations and connections with its employees, consumers, and the local community. The franchise business model gives aspiring small business owners head starts toward becoming their own boss, with a proven business model that can set up new business owners for success and easier access to lines of credit than a traditional business.[17]

The joint-employer standard under *Browning-Ferris* caused significant operational and economic harm to both franchisors and franchisees. While the *Browning-Ferris* standard was in effect, an economic analysis found the decision cost the franchising sector $33.3 billion annually, resulting in as many as 376,000 lost job opportunities.[18]

When the Biden-Harris NLRB in 2023 reversed the Trump joint-employer rule and brought back the *Browning-Ferris* standard, job creators felt the negative effects. Mr. Haller testified:

> Without question, the biggest threat to the strength of franchise relationships, sustainability of the franchise model and future of the entire franchising community—including franchisees, franchisors, suppliers to franchise systems, and the hundreds of thousands of workers they employ and consumers they serve—is the NLRB's unnecessary joint employer rule, which was finalized in October 2023 and is scheduled to take effect in February 2024.[19]

Mr. Haller went on to testify about the practical implications of a broad joint-employer standard for job creators and business owners:

> A "joint employer" finding under the NLRA carries with it dramatic and significant consequences. A joint employer may be held liable for unfair labor practices (ULPs) committed by an unrelated company, even where the first had no control over the actions of the second leading to the ULP. A joint employer is subject to secondary activity, such as boycotting and picketing, which would otherwise be unlawful. Finally, and perhaps most significant, a joint employer (or dozens of joint employers) may be required to bargain with a union over any term or condition of employment over which it exercises (or reserves the right to exercise) even a modicum of control—a set of facts certain to frustrate any effort to reach agreement at the bargaining table.[20]

Under an indirect and reserved control joint-employer standard, franchisors have several choices with respect to how they build and

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[17] *Protecting Workers and Small Businesses from Biden's Attack on Worker Free Choice and Economic Growth: Hearing Before the Subcomm. on Health, Emp., Lab. & Pensions of the H. Comm. on Educ. & the Workforce*, 118th Cong. 49 (2023) (statement of Matthew Haller, President & CEO, Int'l Franchise Ass'n).

[18] RONALD BIRD, STATEMENT REGARDING THE ECONOMIC IMPACT OF THE PROSPECTIVE NLRB PUBLIC POLICY DECISION REGARDING THE DEFINITION OF JOINT EMPLOYER 2 (2019), https://www.franchise.org/sites/default/files/2019-05/JE%20Econ%20Impact%200128.pdf.

[19] Haller statement, *supra* note 17, at 53.

[20] *Id.*

maintain relationships with their franchisees. First, they could become more involved in the day-to-day operations of their franchisees, treating them more like employees, in order to reduce the likelihood that they will be liable for the actions of their franchisees. This would destroy the freedom and opportunity of franchisees to run their small businesses, ultimately destroying the character of the franchise model. Second, franchisors may have to increase the fees they charge franchisees in order to offset the potential costs of increased liability for franchisees' actions. This would also raise the barrier to entry for Americans who want to run their own businesses because it requires more resources to start the business. Finally, franchisors could choose to withdraw much of the support they offer to franchisees in order to reduce the likelihood they would be found to be a joint employer of the franchisees' employees.[21] This result would also be devastating to the franchise model because it is the support from a franchisor that reduces the risk a small business owner faces when starting his or her own business.

Without a consistent, predictable, and clear joint-employer standard, existing franchise businesses suffer, and many Americans who might otherwise start a business or expand their existing businesses are not able to do so because of the mounting costs brought on by the legal uncertainty.

CONCLUSION

H.R. 5267 creates a safe harbor for the franchise industry by restoring the joint-employer standard that workers and employers relied on for decades before the Obama and Biden NLRBs put union interests above those of workers and small business owners. H.R. 5267 codifies for the franchise industry what had been the rule for most of the last 40 years: two or more entities must have actual, direct, and immediate control over workers to be considered their employers. Additionally, without H.R. 5267, the patchwork of joint-employer standards under the FLSA, created by various courts across the country, will exacerbate the regulatory confusion for franchise businesses. Settling the joint-employer definitions for the franchise industry in the FLSA and NLRA will facilitate a thriving franchise industry.

H.R. 5267 maintains existing worker protections in the franchise industry while correcting a confusing joint-employer legal landscape that makes it harder for American franchise businesses. The bill rightly makes the actual employer legally responsible for protecting workers and complying with the law.

SUMMARY

H.R. 5267 SECTION-BY-SECTION SUMMARY

Section 1—Short title

Provides that the short title is "American Franchise Act."

Section 2—Findings

Section 2(1) finds that a franchise is a commercial relationship under which a franchisee acquires the right to operate an inde-

[21] *Id.* at 55.

pendent business that offers, sells, or distributes goods or services using a franchisor's system of operations, which typically includes the franchisor's business system and marking plan and its service mark, trademark, trade dress, or trade name.

Section 2(2) finds that to protect the integrity of its system of operations, a franchisor must set and enforce uniform quality, marketing, and operational standards that govern its use, which helps maintain consistency and uniformity in the quality of the goods and services distributed under the franchisor's trademarks, maintain customer satisfaction, and increase the value of the franchise brand.

Section 2(3) finds that while franchisees must meet the standards set by the franchisors, franchisees are independent business owners and are responsible for implementing the standards and controlling the day-to-day operations of the franchise and its labor relations.

Section 2(4) finds the economic impact of the franchise business model has been profound in terms of economic output and employment of workers in America.

Section 2(5) finds that inconsistent and expansive joint-employer standards have threatened the viability of the franchise model.

Section 3—Clarification of joint employment for franchising

Section 3(a) amends the National Labor Relations Act by adding certain definitions.

Section 3(a) defines "direct and immediate control" of essential terms and conditions of employment to mean actually determining wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction, and the section also specifies definitions for these terms.

Section 3(a) defines "essential terms and conditions of employment" to mean wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. It defines "franchise," "franchisee," and "franchisor" to have the meanings given these terms in 16 C.F.R. § 436.1, a regulation promulgated by the U.S. Federal Trade Commission. This regulation defines "franchise" as a continuing commercial relationship where the franchisee will obtain the right to operate a business associated with the franchisor's trademark, the franchisor has authority to exert a significant degree of control over the franchisee's method of operation, and the franchisee makes a required payment to the franchisor. The regulation defines "franchisee" as any person granted a franchise. The regulation further defines "franchisor" as any person who grants a franchise and participates in the franchise relationship.

Section 3(a) also defines "substantial direct and immediate control" to mean direct and immediate control that has a regular or continuous consequential effect on and essential term and condition of employment of the franchisee's employees, but this does not include direct and immediate control that is only exercised on a sporadic, isolated, or de minimis basis.

Section 3(b) amends the *Fair Labor Standards Act* to say that a franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor meets the criteria for a joint employer with a franchisee under the *National Labor Relations Act*, as amended by H.R. 5267.

Section 4—Applicability

H.R. 5267 shall not apply to any legal proceeding that is commenced before the date of enactment of this Act.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch, as the bill pertains to conditions of employment. H.R. 5267 amends the *National Labor Relations Act* and *Fair Labor Standards Act* to clarify the standard for determining joint employment in the private sector franchise industry and therefore does not apply to the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93–344 (as amended by section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 5267.

EARMARK STATEMENT

H.R. 5267 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 7/21/2026

COMMITTEE ON EDUCATION AND WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 12 Bill: H.R. 5267 Amendment Number: 1

Disposition: Failed by a Full Committee Roll Call Vote

Sponsor/Amendment: SCOTT_AMD_01
Rep. Scott (VA)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. WALBERG (MI) (Chairman)		X		Mr. SCOTT (VA) (Ranking)	X		
Mr. WILSON (SC)		X		Mr. COURTNEY (CT)	X		
Mrs. FOXX (NC)		X		Ms. WILSON (FL)			X
Mr. THOMPSON (PA)		X		Ms. BONAMICI (OR)	X		
Mr. GROTHMAN (WI)		X		Mr. TAKANO (CA)	X		
Ms. STEFANIK (NY)		X		Ms. ADAMS (NC)	X		
Mr. ALLEN (GA)		X		Mr. DESAULNIER (CA)	X		
Mr. COMER (KY)			X	Mr. NORCROSS (NJ)	X		
Mr. OWENS (UT)		X		Ms. MCBATH (GA)	X		
Ms. MCCLAIN (MI)		X		Ms. HAYES (CT)	X		
Mrs. MILLER (IL)		X		Ms. OMAR (MN)	X		
Ms. LETLOW (LA)			X	Ms. STEVENS (MI)	X		
Mr. KILEY (CA)		X		Mr. CASAR (TX)	X		
Mr. RULLI (OH)		X		Ms. LEE (PA)	X		
Mr. MOYLAN (GU)		X		Mr. MANNION (NY)	X		
Mr. ONDER (MO)		X		Ms. GRIJALVA (AZ)	X		
Mr. MACKENZIE (PA)		X					
Mr. BAUMGARTNER (WA)		X					
Mr. HARRIS (NC)		X					
Mr. MESSMER (IN)		X					
Mr. FINE (FL)			X				

TOTALS: Ayes: 15 Nos: 18 Not Voting: 4

Total: 37 / Quorum: 33 Report: Failed

(21 R - 16 D)

Date: 7/21/2026

COMMITTEE ON EDUCATION AND WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 13 Bill: H.R. 5267 Amendment Number: 2

Disposition: Failed by a Full Committee Roll Call Vote

Sponsor/Amendment: SCOTT_AMD_04
Rep. Scott (VA)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. WALBERG (MI) (Chairman)		X		Mr. SCOTT (VA) (Ranking)	X		
Mr. WILSON (SC)		X		Mr. COURTNEY (CT)	X		
Mrs. FOXX (NC)		X		Ms. WILSON (FL)			X
Mr. THOMPSON (PA)		X		Ms. BONAMICI (OR)	X		
Mr. GROTHMAN (WI)		X		Mr. TAKANO (CA)	X		
Ms. STEFANIK (NY)		X		Ms. ADAMS (NC)	X		
Mr. ALLEN (GA)		X		Mr. DESAULNIER (CA)	X		
Mr. COMER (KY)			X	Mr. NORCROSS (NJ)	X		
Mr. OWENS (UT)		X		Ms. MCBATH (GA)	X		
Ms. MCCLAIN (MI)		X		Ms. HAYES (CT)	X		
Mrs. MILLER (IL)		X		Ms. OMAR (MN)	X		
Ms. LETLOW (LA)			X	Ms. STEVENS (MI)	X		
Mr. KILEY (CA)		X		Mr. CASAR (TX)	X		
Mr. RULLI (OH)		X		Ms. LEE (PA)	X		
Mr. MOYLAN (GU)		X		Mr. MANNION (NY)	X		
Mr. ONDER (MO)		X		Ms. GRIJALVA (AZ)	X		
Mr. MACKENZIE (PA)		X					
Mr. BAUMGARTNER (WA)		X					
Mr. HARRIS (NC)		X					
Mr. MESSMER (IN)		X					
Mr. FINE (FL)			X				

TOTALS: Ayes: 15 Nos: 18 Not Voting: 4

Total: 37 / Quorum: 33 / Report: Failed

(21 R - 16 D)

Date: 7/21/2026

COMMITTEE ON EDUCATION AND WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 14 Bill: H.R. 5267 Amendment Number: N/A

Disposition: Adopted by a Full Committee Roll Call Vote

Sponsor/Amendment: Motion to report bill; as amended
Rep. Hern (OK)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. WALBERG (MI) (Chairman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. COURTNEY (CT)		X	
Mrs. FOXX (NC)	X			Ms. WILSON (FL)			X
Mr. THOMPSON (PA)	X			Ms. BONAMICI (OR)		X	
Mr. GROTHMAN (WI)	X			Mr. TAKANO (CA)		X	
Ms. STEFANIK (NY)	X			Ms. ADAMS (NC)		X	
Mr. ALLEN (GA)	X			Mr. DESAULNIER (CA)		X	
Mr. COMER (KY)			X	Mr. NORCROSS (NJ)		X	
Mr. OWENS (UT)	X			Ms. MCBATH (GA)		X	
Ms. MCCLAIN (MI)	X			Ms. HAYES (CT)		X	
Mrs. MILLER (IL)	X			Ms. OMAR (MN)		X	
Ms. LETLOW (LA)			X	Ms. STEVENS (MI)		X	
Mr. KILEY (CA)	X			Mr. CASAR (TX)		X	
Mr. RULLI (OH)	X			Ms. LEE (PA)		X	
Mr. MOYLAN (GU)	X			Mr. MANNION (NY)		X	
Mr. ONDER (MO)	X			Ms. GRIJALVA (AZ)		X	
Mr. MACKENZIE (PA)	X						
Mr. BAUMGARTNER (WA)	X						
Mr. HARRIS (NC)	X						
Mr. MESSMER (IN)	X						
Mr. FINE (FL)			X				

TOTALS: Ayes: 18 Nos: 15 Not Voting: 4

Total: 37 / Quorum: 33 Report: Passed

(21 R - 16 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 5267 is to clarify the standard for determining whether an entity in the franchise industry is a joint employer.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5267 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearing held during the 119th Congress was used to develop or consider H.R. 5267: On June 11, 2025, the Committee's Subcommittee on Health, Employment, Labor, and Pensions held a hearing titled "Restoring Balance: Ensuring Fairness and Transparency at the NLRB."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 5267. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee has requested a cost estimate for the bill from the Director of the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

NATIONAL LABOR RELATIONS ACT

* * * * * * *

SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR FRANCHISING.

(a) DEFINITIONS.—In this section:

(1) DIRECT AND IMMEDIATE CONTROL.—The term "direct and immediate control" means the following with respect to each respective essential term and condition of employment:

(A) WAGES.—A franchisor exercises direct and immediate control over wages if it actually determines the wage rates, salary, or other rate of pay that is paid to individual employees of a franchisee or job classifications of employees of a franchisee.

(B) BENEFITS.—A franchisor exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to a franchisee's employees. Such direct and immediate control—

(i) includes selecting the benefit plans (such as health insurance plans and pension plans) or level of benefits provided to a franchisee's employees; and

(ii) does not include permitting a franchisee, under an arm's-length contract, to participate in a benefits plan of the franchisor.

(C) HOURS OF WORK.—A franchisor exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of a franchisee's employees. Such direct and immediate control does not include—

(i) establishing a franchisee's operating hours; or

(ii) establishing minimum staffing levels to satisfy the franchise's service standards.

(D) HIRING.—A franchisor exercises direct and immediate control over hiring if it actually determines which particular employees will be hired or which employees will not be hired. Such direct and immediate control does not include—

(i) encouraging, recommending, or requesting changes in staffing levels to accomplish tasks; or

(ii) setting minimal recruiting and hiring standards, such as those required by law, for consumer or employee safety, or for brand protection.

(E) DISCHARGE.—A franchisor exercises direct and immediate control over discharge if it actually decides to terminate the employment of an employee of a franchisee. Such direct and immediate control does not include—

(i) bringing misconduct or poor performance to the attention of a franchisee that makes the actual discharge decision;

(ii) expressing a negative opinion of a franchisee's employee; or

(iii) setting minimal standards of performance or conduct, such as those required by law, for consumer or employee safety, or for brand protection.

(F) DISCIPLINE.—A franchisor exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline a franchisee's employee. Such direct and immediate control does not include—

(i) bringing misconduct or poor performance to the attention of a franchisee that makes the actual disciplinary decision;

(ii) expressing a negative opinion of a franchisee's employee;

(iii) refusing to allow a franchisee's employee to perform work under a franchise offer or contract; or

(iv) setting minimal standards of performance or conduct, such as those required by law, for consumer or employee safety or for brand protection.

(G) SUPERVISION.—A franchisor exercises direct and immediate control over supervision by consistently and directly instructing a franchisee's employees how to perform their work or by actually issuing employee performance appraisals. Such direct and immediate control does not include—

(i) providing instructions to a franchisee's employees that—

(I) are limited and routine; and

(II) consist primarily of telling a franchisee's employees what work to perform, or where and when to perform the work, but not how to perform the work;

(ii) setting brand standards for the performance of the work;

(iii) offering training materials (including training demonstrations) for a franchisee to use in training the employees of the franchisee; or

(iv) establishing minimum training requirements for the employees of a franchisee.

(H) DIRECTION.—A franchisor exercises direct and immediate control over direction by assigning particular employees of a franchisee their individual work schedules, positions, and tasks. Such direct and immediate control does not include offering resources and tools for a franchisee to consider using to direct the work schedules, positions, and tasks of the employees of the franchisee.

(2) ESSENTIAL TERMS AND CONDITIONS OF EMPLOYMENT.—The term "essential terms and conditions of employment" means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.

(3) FRANCHISE; FRANCHISEE; FRANCHISOR.—The terms "franchise", "franchisee", and "franchisor" have the meanings given such terms in section 436.1 of title 16, Code of Federal Regulations, as in effect on the date of enactment of this section.

(4) SUBSTANTIAL DIRECT AND IMMEDIATE CONTROL.—The term "substantial direct and immediate control"—

(A) means direct and immediate control that has a regular or continuous consequential effect on an essential term and condition of employment of a franchisee's employees; and

(B) does not include direct and immediate control that is only exercised on a sporadic, isolated, or de minimis basis.

(b) JOINT EMPLOYMENT.—For the purposes of this Act, a franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor possesses and exercises substantial direct and immediate control over one or more essential terms and conditions of employment of the employees of the franchisee.

FAIR LABOR STANDARDS ACT OF 1938

* * * * * * *

SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR FRANCHISING.

(a) IN GENERAL.—For purposes of this Act, a franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor meets the criteria for a joint employer with a franchisee under section 20 of the National Labor Relations Act, except that, for purposes of determining joint-employer status under this Act, the terms "employee" and "employer" referenced in section 20 of the National Labor Relations Act shall have the meanings given such terms in section 3 of this Act.

(b) DEFINITIONS.—In this section, the terms "franchisor" and "franchisee" have the meanings given such terms in section 20(a) of the National Labor Relations Act.

MINORITY VIEWS

INTRODUCTION

H.R. 5267, the *American Franchise Act*, creates a new narrow definition of joint employment under the *Fair Labor Standards Act* (FLSA) and *National Labor Relations Act* (NLRA) for franchisors and franchisees, thereby creating numerous carveouts and safe harbors to protect large franchisors from any liability for NLRA and FLSA violations their franchisees may make based on the franchisor's standards, policies, and direction. This bill risks allowing franchisors to coerce their franchisees into adopting potentially unlawful policies and practices while shielding those very franchisors from liability, leaving franchisees solely liable and workers without full access to justice. Congress should not be in the business of incentivizing unlawful behavior by large corporate franchisors or shielding them from accountability at the expense of workers and small business franchisees.

H.R. 5267 is opposed by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); Actors' Equity Association; American Federation of Teachers (AFT); Alliance for Retired Americans; Amalgamated Transit Union (ATU); American Federation of Government Employees (AFGE); American Federation of Musicians (AFM); American Federation of School Administrators (AFSA); American Federation of State, County, and Municipal Employees (AFSCME); Association of Flight Attendants–CWA; Bakery, Confectionery, Tobacco Workers and Grain Millers (BCTGM) International Union; Communications Workers of America (CWA); Department for Professional Employees, AFL–CIO (DPE); International Alliance of Theatrical Stage Employees (IATSE); International Association of Bridge, Structural, and Ornamental Iron Workers (IW); International Association of Machinists and Aerospace Workers (IAM); International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART); International Brotherhood of Boilermakers; International Federation of Professional and Technical Engineers (IFPTE); International Organization of Masters, Mates and Pilots (MM&P); International Union of Bricklayers and Allied Craftworkers (BAC); International Union of Elevator Constructors (IUEC); International Union of Painters and Allied Trades (IUPAT); International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); Major League Baseball Players Association (MLBPA); Metal Trades Department, AFL–CIO; National Association of Letter Carriers (NALC); National Federation of Federal Employees (NFFE–IAM); National Nurses United (NNU); SAG–AFTRA; Seafarers International Union of North America; Service Employees International Union (SEIU); SMART Transportation Division; Transportation Communications Union/IAM; Union Vet-

erans Council, AFL–CIO; UNITE HERE; United Food and Commercial Workers (UFCW); United Mine Workers of America (UMWA); United Steelworkers (USW); USL Players Association; and the Utility Workers Union of America (UWUA).

BACKGROUND

Labor and employment laws have long held that, where more than one entity controls terms and conditions of employment, an employee may have multiple employers. This is referred to as "joint employment." Under both the FLSA and NLRA, determining joint employment relies on determining the degree of control an entity exercises over a worker, regardless of whether it is direct, indirect, or reserved control.[1] A narrower definition of joint employment would make it easier for low-road businesses to evade liability for obligations under and violations of the NLRA and FLSA. H.R. 5267 does exactly that for franchisors.

THE FLSA AND JOINT EMPLOYMENT

Joint employment under the FLSA arises not only out of the definition of *employer*, which "includes any person acting directly *or indirectly* in the interest of an employer in relation to an employee,"[2] but also out of the broad "suffer or permit" definition of "employ," which Congress borrowed from the early state child labor laws of the late 19th and early 20th centuries.[3] State authorities used this broad language to hold businesses accountable for child labor violations despite arrangements such as the "inside shop," where a manufacturer might subdivide the departments of the business into shops contracted out to other business operators, who all nevertheless contributed to the manufacturer's enterprise.[4]

The Supreme Court first examined FLSA joint employment in the 1947 case *Rutherford Food*.[5] In that case, a slaughterhouse operator retained an independent contractor to provide labor for a deboning process, and the deboning contractor directly hired workers to perform that work.[6] The employees worked on the meatpacking company's premises, received cattle carcasses from the meatpacking company's employees, deboned the cattle using the meatpacking company's tools and equipment, and then conveyed the deboned cattle along an overhead rail to another room where the meatpacking company's employees continued processing the carcasses into food products.[7] During this work, the deboning contractor's employees were supervised by one of the meatpacking company's "managing official[s]."[8] Taking account of "the cir-

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[1] "Reserved control" is the right an employer retains to exert control over an employee, even if it is not being currently exercised. As summarized by the Supreme Court in the common law context, "the relation of master and servant exists whenever the employer retains the right to direct the manner in which the business shall be done, as well as the result to be accomplished, or, in other words, 'not only what shall be done, but how it shall be done.'" *Singer Mfg. Co.* v. *Rahn*, 132 U.S. 518, 523 (1889) (quoting *Railroad Co.* v. *Hanning*, 82 U.S. 649, 657 (1872)).

[2] *See* 29 U.S.C. § 203(d) (emphasis added).

[3] Bruce Goldstein et al., *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L. REV. 983, 991 (1999).

[4] *Id*. at 1057–58.

[5] Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947).

[6] *Id.* at 724–25.

[7] *Id.* at 726, 730.

[8] *Id.* at 730.

cumstances of the whole activity," the Court agreed with the U.S. Department of Labor's Wage and Hour Division that the deboning employees constituted "a part of the integrated unit of production under such circumstances that the workers performing the task were employees of the establishment." [9]

More recently, the U.S. Court of Appeals for the Fourth Circuit advised that scrutiny of potential joint employer liability should focus less on the relationship between business and worker and more on the interrelationships of the businesses themselves.[10] In *Salinas*, the Fourth Circuit considered wage theft allegations brought by workers employed by a drywall and framing subcontractor, which almost exclusively worked on jobs for a construction contractor that specialized in finishing interiors.[11] Among other things, the contractor assessed the final work product of the subcontractor's employees and required the subcontractor to order re-execution of work the contractor deemed insufficient; mandated that the subcontractor's employees wear the contractor's logo and hold themselves out as employees of the contractor; and periodically instructed the subcontractor to dispatch workers to meet the contractor's needs.[12] Finding that the contractor was indeed jointly liable with the subcontractor for FLSA violations, the *Salinas* court clarified that joint employment inquiry "requires courts to determine whether the putative joint employers are not wholly disassociated or, put differently, share or codetermine the essential terms and conditions of a worker's employment." [13]

Joint employment is not a major factor in FLSA cases. The National Employment Law Project (NELP) reviewed FLSA enforcement and litigation in 2019 and found:

> there are not very many joint employer cases overall, as compared to other FLSA cases, despite the [business community's] pronouncements that the joint employer question is harming business . . . . NELP's research and case compendium of joint employer cases shows that the majority arise in FLSA cases brought by agricultural workers, and over half of all cases do not result in a finding of joint and several liability.[14]

In sum, establishing joint employment liability under the FLSA is a comprehensive, case-by-case, and fact-specific process that requires flexibility to ensure that in the cases where joint employment liability is appropriate, workers can receive the justice to which they are entitled.

THE NLRA AND JOINT EMPLOYMENT

The NLRA's definition of "employer" contemplates that there can be joint employers in an employment relationship. Under Section 2(2) of the Act, the term "employer" includes "any person acting as

[9] *Id.* at 729–730.
[10] Salinas v. Commercial Interiors, Inc., 848 F.3d 125 (4th Cir. 2017).
[11] *Id.*
[12] *Id.* at 145–46.
[13] *Id.* at 139.
[14] Christine Owens et al., Nat'l Emp. L. Proj., *Comments on RIN 1235–AA26: Joint Employer Status Under the Fair Labor Standards Act* 3 n.1 (June 25, 2019), https://s27147.pcdn.co/app/uploads/2019/06/Comments-USDOL-Joint-Employer-Status-FLSA.pdf.

an agent of an employer, directly *or indirectly*."[15] Likewise, the term "employee" is not limited to the employees of a particular employer. Section 2(3) of the Act states: "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless [the Act] explicitly states otherwise."[16]

For most of the time since the 1935 enactment of the NLRA, the NLRB has held that an entity may be liable to bargain with the employees of a subcontractor as a joint employer even if its control over terms and conditions of employment was indirect, such as exercised through an intermediary, or reserved but not yet exercised.[17] This traditional standard is consistent with the Supreme Court's requirement[18] that the NLRB interpret the NLRA's definition of employer as consistent with the common law regarding the principles that govern "master" and "servant" relationships and that liability is determined by the degree of control the "master" has over the "servant."[19] The NLRA's joint employment standard is also consistent with the legislative history of the NLRA's 1947 amendments, which explicitly aligned the NLRA's statutory definition of employee with the common law standard.[20]

JOINT EMPLOYMENT AND THE FISSURED WORKPLACE

Joint employment is a flashpoint in labor and employment law because of the recent trend toward "fissuring," or the disintegration of the firm through the use of overlapping arrangements of contracting, subcontracting, franchising, and temping.[21] Fissuring is increasingly common in low wage industries, including but not limited to logistics,[22] food service, retail, and janitorial services.[23] Today, there are nearly 9 million Americans working at over 800,000 individual franchises.[24] Fissured work arrangements are associated with increased incidence of a host of workplace violations.[25]

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[15] *See* 29 U.S.C. § 152(2) (emphasis added).

[16] *See id.* § 152(3).

[17] *See, e.g., Floyd Epperson*, 202 NLRB 23, 23 (1973) (finding proof of joint employment where client employer had "some indirect control over [employees'] wages" and "some control, albeit indirect, over [employee] discipline"), *enforced* 491 F.2d 1390 (6th Cir. 1974); *Franklin Stores Corp.*, 199 NLRB 52, 53 (1972) (upholding ALJ finding of joint employment where one employer, "by virtue of the lease arrangement with" the other employer, "has the right to veto the employment of employees by" the other "and to insist on the discharge of employees by" the other).

[18] *See NLRB v. United Ins. Co. of America*, 390 U.S. 254, 256 (1968) (requiring the Board to "apply general agency principles in distinguishing between employees and independent contractors under the Act").

[19] *See* Restatement (First) of Agency § § 2, 220, Am. Law Inst. (1933).

[20] *See* H.R. REP. NO. 80–510, at 32–33 (1947) (Conf. Rep.), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 536–37 (1948) (explaining the exclusion of independent contractors from the definition of employee in order to overturn a Supreme Court decision that "held that ordinary tests of the law of agency could be ignored by the Board" in determining the existence of employment relationships).

[21] *See generally* DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT (2014).

[22] *See, e.g.*, Stacy Mitchell & Olivia LaVecchia, *Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities* (Nov. 2016), https://ilsr.org/wp-content/uploads/2020/04/ILSR_AmazonReport_final.pdf.

[23] *See* Catherine Ruckelshaus et al., *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, Nat'l Emp. Law Proj. (May 7, 2014), https://www.nelp.org/app/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards-Outsourced-Work-Report.pdf.

[24] Franchising Economic Outlook, Int'l Franchise Ass'n (2026), https://indd.adobe.com/view/c09364f3-8c80-4b2f-bbcc-56414924ae67.

[25] WEIL, *supra* note 21.

The rise of the "fissured workplace" makes FLSA enforcement challenging. For example, it can be difficult for workers experiencing wage theft at the bottom of a chain of contracts to collect stolen wages when the nominal employer is a fly-by-night staffing company. In such a case, the joint employer theory allows workers to seek their stolen wages from a larger company further up that chain, if that larger company shares power over the terms of employment.

Fissuring can also weaken workers' bargaining power. Absent the joint employment doctrine, workers hired by an intermediary firm but laboring for a larger, more powerful firm with actual control over their working conditions and wages will find it difficult to bargain meaningfully.

THE FRANCHISE MODEL AND JOINT EMPLOYMENT

In the franchise business model, the corporate parent or "franchisor" allows an independent business owner, or franchisee, to use its branding, business model, and other intellectual property. In return, the franchisee agrees to pay an upfront franchise fee, ongoing royalties, and is subject to the terms of the franchise agreement that sets operating, performance, and management standards for the franchisee.[26]

Despite claims that franchisees operate as independent small businesses, corporate franchisors can and do exercise significant amount of control over their franchisees. Through franchise agreements, brand standards, and operational requirements, franchisors often set operating hours, mandate staffing levels, require specific scheduling or payroll software, establish detailed rules for how work must be performed, and restrict who may work under a franchise agreement. For example, some fast-food franchisors provide their franchises with extensive operation manuals that set franchise requirements on everything from workers' training, dress, and appearance to approved food and merchandise suppliers to participation in advertising, sales promotions, and required computer systems.[27]

Franchisees are under immense pressure to conform with franchisor standards and directives and risk losing their businesses if they do not. This level of control and supervision meaningfully constrains and directs how franchisees conduct their day-to-day business and worker supervision. Adding to franchisees' constrictions, the *American Franchise Act* explicitly shields franchisors from any sort of liability for these sorts of practices when determining joint employment liability.

A NARROW JOINT EMPLOYMENT STANDARD WILL HARM WORKERS AND SMALL BUSINESSES AND BENEFIT LOW-ROAD EMPLOYERS

The *American Franchise Act* seeks to radically rewrite longstanding law by amending the FLSA and NLRA to dramatically narrow the standard for finding joint employer liability for

[26] *Introduction to the Franchise Business Model*, Int'l Franchise Ass'n, https://www.franchise.org/franchising-overview/introduction-to-the-franchise-business-model/ (last visited Aug. 19, 2026).

[27] Andrew Elmore, *The Future of Fast Food Governance*, Univ. of Pennsylvania Law Rev. Online (May 24, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2903691.

franchisors and franchisees. The bill would limit the finding of joint employment liability to a franchisor's possession and exercise of "substantial direct and immediate control" over their franchisees' workers' terms and conditions of employment, such as their pay, hiring, firing, and scheduling. While this extremely narrow standard is problematic enough, the bill goes a step further by also creating explicit safe harbors in which certain actions that could normally be considered "direct and immediate control, are carved out from being indicators of joint employment.

The bill would weaken enforcement under the FLSA, which also governs federal wage theft and child labor laws. By limiting FLSA liability only to franchisors that exercise "substantial direct and immediate control," the *American Franchise Act* would allow franchisors to evade liability for unlawful business practices and technology requirements that could result in wage theft and child labor violations. Instead, the franchisee, who may be obligated to follow these unlawful practices if it wishes to comply with its franchise agreement, is left fully liable for any damages and other consequences caused by the franchisor.

This bill would also severely limit how unionized workers could effectively bargain over all of the terms and conditions of their employment under the NLRA, which provides private-sector workers the right to organize a union and collectively bargain with their employer.[28] Under common law, the employer does not need to exercise substantial direct and immediate control in order to determine the essential terms and conditions of employment because a joint employer can limit the wages and benefits paid by the employees' direct employers through contractual arrangements, such as salary caps. By narrowing joint employment liability to only franchisors that exercise "substantial direct and immediate control," workers for the franchisee would be unable to bargain with the franchisor that determines wages and other conditions, and the franchisee would be unable to meaningfully bargain with its employees on its own.

The *American Franchise Act* would also create a safe harbor for franchisors to engage in worker retaliation. The bill allows franchisors to supervise a franchisee's workers—so long as it is not "consistently and directly"[29] exercised—and inform the franchisee of their "opinions" on the performance of employees, and whether they meet acceptable standards. Through this safe harbor, a franchisor could strongly encourage a franchisee to terminate a worker engaged in union organizing activity or who raises concerns about unlawful actions in the workplace and face zero consequences.

In sum, the *American Franchise Act* is bad for workers, bad for small business franchisees, and writes a blank check to big businesses to bully and control small businesses and their workers without any accountability.

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[28] *See generally* 29 U.S.C. § 151–169.

[29] The bill does not provide a definition of "consistently and directly" and instead only lists examples of supervision that would *not* constitute consistent and direct control, leaving a large degree of uncertainty regarding what qualifies as consistent and direct control. *See* American Franchise Act, H.R. 5267, 119th Cong. § 20(a)(G) (2025).

DEMOCRATIC AMENDMENTS OFFERED DURING THE MARKUP OF H.R. 5267

Committee Democrats proffered two amendments to improve H.R. 5267. The first amendment would have struck the joint employment definition under the FLSA created by H.R. 5267 and replaced the joint employment definition under the NLRA with the more equitable and worker-friendly definition from the text of H.R. 20, the *Protecting the Right to Organize Act*.[30] The second amendment would have established the right for franchisees to sue franchisors for damages if the franchisee is found liable for NLRA or FLSA violations due to franchisor-mandated policies or guidance. Committee Republicans rejected both amendments.

Amendment	Offered By	Description	Action Taken
2	Mr. Scott	Strikes and replaces the joint employment definition under the NLRA with Sec. 101(a) of H.R. 20, the *PRO Act*. Strikes the FLSA joint employment definition created under the bill.	Defeated
3	Mr. Scott	Establishes the right for franchisees to sue franchisors for damages if the franchisee is found liable for NLRA or FLSA violations due to franchisor-mandated policies or guidance.	Defeated

CONCLUSION

For the reasons stated above, all Committee Democrats present at the markup opposed H.R. 5267 when the Committee on Education and Workforce considered it on July 21, 2026. We urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
SUZANNE BONAMICI,
MARK DESAULNIER,
ADELITA GRIJALVA,
Members of Congress.

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[30] Richard L. Trumka Protecting the Right to Organize Act of 2025, H.R. 20, 119th Cong. (2025).