



Global Franchise Regulation Update Regulatory Developments and Proposals Since 2016

By Carl E. Zwisler

Gray Plant Mooty
Updated February 28, 2019

European Union

General Data Protection Regulation (Effective May 25, 2018)

- Requires companies including Franchisors & Franchisees to protect personal data of EU residents.
- Applies to all companies that process personal data of EU residents (“Covered Entities”), including personal data of EU residents collected during their visits to other countries.
- “Data protection officers” must be hired by each Covered Entity.
- Individuals must give written consent to use their personal data, and they may withdraw their consent, easily, at any time. Personal data must be readily provided to customers if requested by them at no cost, within 30 days.

- Companies must notify their “Data Controllers” of changes in customers’ consent.
- Notices of data breaches must be sent by Data Controllers no later than 72 hours after breach occurs.
- EU Data Directive restricts sharing personal data outside of EU unless company adheres to certain international agreements, e.g., the EU-US Privacy Shield.
- Fines and penalties of up to the greater of €20 million or 4% of a company’s global annual sales are permitted for violations.
- Class action lawsuits and other judicial relief is also available.

Trade Secrets (Effective June 9, 2018)

- EU Directive establishes standards for trade secrets protection for member states to adopt within 2 years.

Franchise Report (Issued May 17, 2017)

- European Parliament Report “The functioning of franchising in the retail sector.” (September 12, 2018)

The EU Parliament issued a report calling for studies of the impact of franchising in the EU, studies of unfair trading practices and for a study of the impact of competition laws on franchising to evaluate whether they reflect “market reality.” The report states that “a uniform approach to correct unfair trading practices at the EU level is advisable.” The Parliament writes that it is “important...that non-legislative homogeneous guidelines, reflecting best practices, on the functioning of franchising in the retail sector be put in place.”

The report emphasizes “franchising is a contractual relationship between two legally independent businesses,” a stance which may be viewed as antagonistic to the concept that franchisors should be considered joint employers with their franchisees.

Further recommendations include:

1. encouraging “dialogue between franchisees and decision makers, to facilitate the creation of associations representing franchisees and to make their voices heard whenever policies or legislation are prepared that may affect them....”
2. requesting an evaluation of the effectiveness of self-regulatory codes of ethics;
3. requests an evaluation of on-line sales and noncompete provisions of franchise agreements; and
4. requests that the Parliament should be involved whenever regulations or directives on franchising are proposed to assure their consistency.

EU Vertical Block Exemption (VBER) Evaluation

European Commission has opened current VBER for comment, to evaluate its restrictions.

Franchise agreements are considered “vertical agreements,” and are subject to strict regulation of some practices that are not restricted by U.S. and other countries’ antitrust laws.

Franchisors may not generally prohibit franchisees with “exclusive territories” from making “passive sales” to customers outside of their territories. A “passive sale” is one that is initiated by the buyer, rather than through direct solicitation by the seller.

Internet sales are deemed “passive sales.” Thus, franchisors may not restrict franchisees from advertising their products and services on the internet (except for restrictions on trademark use, false advertising, etc.) and selling to buyers worldwide.

Comment Period ends May 27, 2019.

European Franchise Federation

Revised Code of Ethics (Effective Dec. 6, 2016)

- Standards to be adopted and enforced by national franchise associations.
- Standards may be embraced by national legislatures, but pose problems for franchisors, including:
 - Duty to have a successful business concept in the relevant market for at least one year and at least one pilot outlet before franchisor may offer franchises.
 - Duty to provide full (undefined) disclosure of all material facts to prospective franchisees.
 - Disputes must be resolved, first through mediation and, if it fails, through arbitration “organized or approved by a European Franchise Federation National Association Member” or through litigation.
 - French court rejected claim based on franchisor’s alleged violation of Code of Ethics.
 - Prominent French lawyer has published article advocating legal remedies for European Franchise Federation Code of Ethics violations.

Australia

Parliamentary Inquiry into Franchising (Comment period began March, 2018; Report due March 14, 2019 (February 2019).)

- More than 220 public and 190 private submissions received in Australian Parliament's Franchising Inquiry
- Parliament launched the investigation after hearing complaints of abusive practices in franchising. Respondents were asked to describe problems in franchising in Australia and to propose solutions. The comment period has been extended until December 6, 2018.
- The parliamentary Joint Committee on Corporations and Financial Services has also conducted six public hearings.

FRANdata Australia's Submission:

1. We see no endemic problems in Australian franchising;
2. The regulatory framework is consistent with similar frameworks around the world, and indeed would be generally regarded as one of the most comprehensive; and
3. The statistical level of disputes in Australian franchising remains quite low, at around 2%, with mediation being a highly effective dispute resolution mechanism. In our view, the fact that around 80% of matters referred to mediation are resolved by mediation to the satisfaction of the parties compares very favorably with any other jurisdiction in the world.

Australian Consumer Act--Unfair Contract Terms (Effective Nov. 12, 2016)

- Applies to all contracts in which either the franchisor or its franchisee employs 20 or fewer employees when the contract is signed, requiring payment to the franchisor of less than AU\$ 1 million for a term of more than 1 year, or less than AU\$300,00 for a contract with a term of less than one year. If the law applies, unfair contract terms (not clearly defined) are not enforceable.

Australian Fair Work Act of 2009 Amendment (Effective October 27, 2017)

- Makes franchisors jointly liable for workplace contraventions committed by franchisees when franchisors are aware of the infractions, or should have been aware that they would occur, and fail to stop or prevent them (applicable where franchisors exert a "significant degree of influence and/or control over the franchisee entity's affairs"); expressly prohibits employers from engaging in unfair pay practices; empowers the Fair Work Ombudsman with greater investigative privileges.

Cambodia

Franchise Protection Law (Said to be in development. Phnom Penh Post, May 5, 2017)

- Kingdom is currently working to draft a franchise protection law.
- Growing coffee business in Cambodia has generated desire to expand internationally, possibly via franchising format.

Canada

British Columbia Disclosure Law (Effective February 1, 2017). Similar to franchise laws in five other provinces.

Ontario Parliament (Report Released May 23, 2017). Changing Workplaces Review Final Report of the Special Advisors for the Ontario Government declined to recommend a new joint employer status for franchisors. However, it did recommend that Parliament find ways to allow employees of multiple franchised locations of the same brand to collectively bargain with franchisees and their franchisor.

- Quebec - Franchisors owe duty to protect and enhance brand. Supreme Court of Canada upholds Quebec court finding that Dunkin' Donuts had a duty to protect and enhance the brand and was liable to franchisees for not doing so. (*Dunkin' Brands Canada Ltd v. Bertico Inc.* March 17, 2016)

Ontario - trial court. Failure to disclose terms of a lease that was not negotiated or signed until after an FDD was delivered violated Ontario Franchise Law. Court of Appeal reversed and held that minor disclosure errors are not tantamount to nondisclosure. (*Raibex Canada Ltd. v. ASWR Franchising Corp.* January 25, 2018)

Ontario –Amendments to Franchise Legislation (Bill 154) (September, 2017)

- Acknowledges that franchisors may be licensees, rather than owners, of the franchise's intellectual property.
- Establishes that the mere *right* to exercise control (vs. the act of exercising control) is sufficient legal grounds for a business to be considered a franchise.
- Statements of material change will contain the information that will be prescribed in forthcoming regulations.
- In order for non-disclosure agreements to be exempt from disclosure, they must be limited in scope.
- Disclosure document does not need to be provided upon payments of a refundable deposit if (i) the payment amount does not exceed a to-be-determined amount, (ii) the monies paid are refundable and free of deductions, and (iii) the payment is in connection with an agreement that does not require that the franchisee enter into a franchise agreement.
- Disclosure exemption is expanded to include the grant of a franchise to a corporation controlled by former director or officer when (i) franchisee has held position of officer or director of franchisor entity or associated entity for at least six months, or (ii) franchisee was previously an officer or director for at least six months within the past four months.
- Clarifies that disclosure exemption in instances of a fractional franchise must be based upon calculation of anticipated sales in the first year of operation.

- Clarifies that the disclosure exemption based on de minimis and large investments should be based on the total initial investment (vs. the total annual investment) needed to acquire and operate a franchise.

Egypt

Revised Proposed Egyptian Franchise Law (January, 2019).

Designed to “enhance the business environment through a better regulatory framework,

All franchises must be registered with MOTI. Franchisors must submit “essential data,” but legislation establishes no standard for reviewing documents or data submitted for registration.

Franchisors must notify both prospective franchisees and existing franchisees of possible changes in conditions that could adversely affect the franchisee’s business.

Legislation is so ambiguous that knowing how to comply would be impossible.

Post-term noncompete covenants may prohibit franchisees from “competing with the franchise,” but what that means is unclear.

All disputes must be resolved through arbitration. Franchisors and franchisees could not pursue injunctions or other remedies in courts—anywhere.

France

El Khomri Law Franchise Provisions Repealed (Labor Law of August 8, 2016) Decree No. 2017-773 (Effective May 7, 2017)

- Repealed (February 14, 2018) confirmed by Constitutional Council (March 21, 2018)
- 2018 amendment repeals the sections dealing with franchising
- 2017 law established a “social dialogue committee” in franchise networks:
 - Committees would have been comprised of representatives of the franchisor, its franchisees and their employees, which shall meet at least twice per year. The purpose was to discuss issues relating to staffing and working conditions.
 - Franchisor was required to inform the committee of decisions likely to affect the volume or structure of the workforce, work duration, conditions of hiring, and training of employees.
 - Franchisors were required to notify franchisees of outlets that are opening or closing.

Civil Code Amendments (Ordinance N°2016-131 of February 10, 2016 for the Reform of Contract Law. Effective October 1, 2017)

- Courts may “rebalance” the terms of franchise agreements in case of “hardship” or to remove from adhesion contracts a term that creates an “imbalance.”

- Application of the amendments may be waived in the contract itself.

Germany (Spring, 2017)

Franchise Disclosure Requirements Discussed

- Federal Ministry of Justice contracted with Chemnitz University professor to prepare a report regarding the costs and benefits of franchise disclosure regulations. The German Franchise Association is monitoring progress.
- Although the Federal Ministry of Justice has been evaluating whether to recommend the adoption of a national franchise disclosure requirement, the German Franchise Association has opposed the idea.

Hong Kong

Competition Commission Advisory (April 9, 2018)

- Agreements between employers not to hire each other's employees "are at risk of contravening the First Conduct Rule of the Competition Ordinance."

Indonesia (January 3, 2019)

- Indonesian government plans to revoke the limitations on:
 - the number of franchise outlets of convenience stores amending the Trade Ministerial Regulation No. 68/2012
 - the number of franchise outlets of food and beverage outlets amending the Trade Ministerial Regulation No. 7/2013

Iraq

Commercial Agency Law Amended (Effective November 13, 2017)

- Applies to franchises and distributorships. Only Iraqi nationals may be "commercial agents." Unregistered commercial agency agreements are not enforceable. Commercial agency agreements may not be terminated or non-renewed without good cause or in accordance with written agreements.
- Iraq's CAL did not previously regulate franchises.
- Registration is mandatory. Failure to register can result in fines and in refusal of Iraqi courts to enforce franchise agreements.
- Nonrenewal and termination of franchises is now unlawful, except for good cause. November 13, 2017.
- Needs Kurdistan Parliamentary Approval to become effective there.

Japan (Promulgated/Effective June 2, 2017)

- Clarifies remedies for breach of contract and specifically only permits franchise agreements to be terminated for material violations of a contract.

Kuwait

Commercial Agencies Law (Enacted March, 2016; Amended April 23, 2017)

- Amended to specifically address franchises and to allow for non-exclusive agencies.

Myanmar

- Myanmar has adopted a trademark registration law. (January 30, 2019). Regulations are now being prepared. Myanmar had not previously had a trademark registration regime.

Namibia

Desire for Development of Franchise Laws (Winter, 2017)

- Namibian Competition Commission (NaCC), as advisor to the Ministry of Trade, Industrialisation and SME Development, submitted a study that could serve as the basis in drafting franchise laws in Namibia.
- Franchise laws would increase competition for consumers and improve current problems related to market monopoly and higher royalty fees.

Netherlands

Draft Legislative Proposal regarding Special Regulation on Franchise Agreements Issued for Comment (December 12, 2018)

Franchisors would be required to deliver a disclosure document to prospects at least four weeks before a sale could be concluded.

Regulations would allow individual franchisees and associations of franchisees to reject franchisors' proposals to materially modify operating standards or franchise agreement terms, even if franchise agreements allowed franchisors to make such changes.

Franchisors would be required to make ongoing disclosures to prospects and existing franchisees about all information "that they know or can reasonably suspect to be relevant or become relevant for the other party...[relating] to the performance of the agreement..."

Franchisors would be required to disclose "financial information regarding the intended location of each franchisee's business." This applies even when franchisees select their own business locations, perform their own market research and negotiate their own leases, and when the franchisor is from a remote or foreign location.

The legislation requires franchisors and franchisees to be “good franchisors and franchisees.”

When a franchise agreement is being negotiated, only changes that benefit a franchisee are lawful.

Franchisors would be required to compensate franchisees for “goodwill” upon termination.

New Zealand

Department of Economic development, Science and Innovation Rejects Proposal to Exempt Franchises from Cartel Legislation (October, 2018)

- Rather than exempting franchises per se, the report focuses on the substance of agreements between franchisors and franchisees, and recognizes that those agreements will often fit within the “collaborative activity; vertical supply contract and joint buying” exemptions of the law. The law criminalizes acts that violate the law.

Draft Commerce Act Amendment Bill (for the Criminalization of Cartels) based on a recent Departmental Report to the Economic Development, Science and Innovation Committee

- Features of franchising such as price agreements, trade restraints, or the allocation of territories will be considered an offense unless the parties can prove that one of the three legislated exemptions applies.
- The exemptions are: Collaborative Activity; Vertical Supply Contract; and Joint Buying Exception. The exemptions/exceptions focus on the substance of the arrangements rather than a specific business model or form.

Nigeria

Bill to establish the Institute of Chartered Franchise Executives of Nigeria. (Proposed January 2018)

- Responsible for registering and disciplining its members—and related matters.
- Passed second reading in House of Representatives.

Pakistan

Courts (July, 2017)

- The Karachi High Court ruled in favor of Hardee’s Food Systems, Inc. (“Hardee’s”) in a dispute brought by an assignee/licensee regarding exclusive territorial rights.
- The territorial rights at the heart of the dispute were articulated in an International Development Agreement (“IDA”). The assignee/licensee entered into an International Multi-Unit License Agreement (“MULA”) for a single restaurant after the Hardee’s served notice of termination of the IDA. The assignee/licensee was not a party to the IDA.

- The court ruled that the assignee/licensee was never granted territorial protection (territorial rights were not contemplated in the MULA), and therefore Hardee's did not violate any territorial protection rights.

Other Requirements under Franchise Law (Effective 2018)

- Maximum initial franchise fee is \$100,000 USD regardless of the territory size.
- Maximum monthly royalty fee is 5% (excluding sales tax).

Qatar

Commercial Agency Law Amended (Effective 2016)

- Expanded to apply to distributors, including franchises that distribute products supplied to franchisors.

Romania (Proposed October, 2018)

Amendment to Ordinance No. 52/1997

- Amendments proposed by the Government would include:
 - a National Franchise Registry to monitor franchise businesses
 - a franchisor would register its information disclosure document with the National Franchise Registry for free
 - a franchisor would have to open and operate a “pilot unit” or “testing unit” in the country for one year to test the franchise business and finalize the type of business to be offered

Saudi Arabia (Proposed January, 2017)

- Consultative Council (Majlis Ash-Shura) would require franchisors to: (1) meet minimum experience standards, (2) impose mandatory contract terms, (3) register franchise agreements and comprehensive disclosure documents, and (4) adhere to regulations regarding termination, non-renewal and transfers of franchise agreements. The Ministry of Commerce and Investment would regulate franchising.

South Korea

Amendments to Franchise Act (Proposed Summer, 2017)

- Proposal would:
 - allow local government to handle registration & disclosure cancellations.

- prohibit unilateral change to territories by franchisors.
- prohibit retaliation by franchisors against franchisees who report.
 - Franchisors who retaliate against whistleblowers are subject to 3x damages.

Courts -- Pizza Hut fined \$5 million USD for violations of Korean Franchise Law (January, 2017).

- Collected about \$5.6 million in “administrative fees” that were not specified in franchise agreements, and that were imposed unilaterally.
- Collected initial training fees directly from franchisees, instead of placing them in escrow in a financial institution as prescribed by Enforcement Decree or obtaining insurance or deferring collection until the franchisee is open or 2 months has passed.
- KFTC chair proposed to require franchisors to reduce royalties to help franchisees pay increase in minimum wages.

Trademarks

- 4 Franchisor CEOs who registered Trademarks used by franchise brands are indicted for violating the act of aggravated punishment for specific economic crimes.

Korean Intellectual Property Office no longer allows owners of franchisors from applying for new trademarks under their individual names, unless they can personally provide evidence of how they, rather than their companies, plan to use the marks. Korea Joongang Daily, August 20, 2018

Korean Commission on Foreign Partnerships

Family restaurant franchises only may be granted to SMEs who may open no more than 5 new franchised restaurants in the country per year. The 2013 requirement of the KCCP alternatively restricted the geographic areas within which foreign franchisors could establish restaurants.

USTR has raised concerns, but since 2016, the KCCP has been focused on restricting franchising in other sectors. As of 2018, the more recent restrictions have not affected franchisors. Source: 2018 National Trade Estimate Report on FOREIGN TRADE BARRIERS, USTR

Korea Fair Trade Commission Limits Franchised Convenience Stores (December, 2018) Chosunilbo Business

KFTC has banned the opening of new franchised convenience stores within 50- 100 meters of an existing C-store.

Spain

Update – Franchise Registration Requirements Cancelled (Effective December 7, 2018)

- As of December 7, 2018, the Royal Decree 20/ Act 20/2018 of 7th December of Urgent Actions was passed to delete certain obligations for franchisors. Franchisors (local or

foreign) are no longer obligated to register its franchise concept with the Registry of Franchisors. In additions, franchisors do not have provide annual reports updating its information with the Registry. Lastly, the sanctions for such a breach were also deleted from the law.

Franchise Registration Requirements Suspended (Effective April, 2018)

- Requirement was suspended because of administrative policies. May be reinstated at any time. Failure to register no longer can result in sanctions for Franchisors. Legislation is expected to repeal registration requirement. Source: JAUSAS Department of Distribution and Franchise Newsletter, September 2018

Vietnam

Registration Requirements for Foreign Franchisors (Amended September, 2017)

- Business entities shall register the franchising activity with the Ministry of Industry and Trade.
- Amendment limited restrictions regarding products and services that could be offered through a franchise agreement.

United States

Joint Employer

- NLRB and Browning Ferris (BFI) case extended joint employer standard to likely treat franchisors as joint employers with franchisees for purposes of labor negotiations and unfair trade practices. NLRB adopted a standard permitting a finding of joint employer liability if a franchisor has even unexercised or indirect rights to control a franchisee's employees. NLRB reverted to former "direct control" standard in Hybrand decision. Hybrand decision was withdrawn in February 2017, reinstating BFI decision. Case is now before DC Circuit Court of Appeals.
- NLRB has proposed a regulation which would define a joint employer as existing only if two employers share or co-determine the employees' essential terms and conditions of employment, and both employers possess and actually exercise direct and immediate control over the essential terms and conditions of employment of another employers' employees in a manner that is not limited and routine. The comment period was extended to February 11, 2019 following the decision of the U.S. Court of Appeals for the District of Columbia, which upheld the BFI decision relating to the definition of "joint employer." However, the appeals court remanded the case to the NLRB to explain which forms of indirect control relate to essential employment terms. The court also directed the NLRB to explain how labor negotiations could be conducted between joint employers and their joint employees. (December. 2018)
- The Trademark Licensing Protection Act of 2018, H.R. 6695 was introduced in the U.S. House of Representatives for the purpose of clarifying that brand protection controls

exercised by a trademark licensor do not make it a joint employer with its licensees. (August 2018) The bill has not been introduced in this Congress. (February 2019).

- Previous NLRB General Counsel sued McDonald's for unfair labor practices claiming it was a joint employer, arguing that the BFI standard applied. Current NLRB General Counsel has urged settlement of McDonald's case, likely employing pre-BFI joint employer standard. Judge disapproved the settlement. (March 2018).
- Defense of Trade Secret Act (Adopted May 2016). Provides nationwide standards for protection of trade secrets, which were previously only protected under state laws.

Anti-Poaching

- State Attorneys General Investigations. After Washington State Attorney General began investigations into the use of anti-poaching agreements in the restaurant industry in March, 2018, 14 other state attorneys general announced that they were also investigating anti-poaching language in franchise agreements. Since then the investigation has been extended to many other industries, and at least 57 franchisors are reported to have entered into "assurances of discontinuance" agreeing to no longer enforce no-poach agreements and to delete anti-poaching language from their future franchise agreements. (February, 2019)
- U.S. Department of Justice. The Antitrust Division of the Department of Justice (DOJ) is rumored to be investigating franchisor's anti-poaching agreements and evaluating whether to bring charges for criminal violations of the antitrust laws. (September 2018) In January, 2019 DOJ filed a "Statement of Interest" in three franchise class action law suits, indicating it would argue that anti-poaching agreements should only be analyzed under a "rule of reason" standard. That would require the plaintiff employees to demonstrate that the anti-poaching clauses have had a material, adverse effect on the entire labor market in the areas in which they had been employed. In at least three cases in which courts had already ruled on the defendant franchisors' motions to dismiss, the courts had indicated that the cases could proceed under a "per se" or "quick look" standard, which does not require an analysis of competitive impact.
- Federal Trade Commission (FTC) / Department of Justice (DOJ) Antitrust Division - Memorandum on Anti-poaching (of employees) Agreements (October, 2016). As an example, agreements prohibiting franchisees from recruiting the staff of other franchisees or the franchisor may be subject to civil or criminal prosecution. DOJ announced plans to pursue criminal claims for certain violations involving "Naked agreements," not to hire employees.
- Class action lawsuits have been filed in the restaurant industry, income tax preparation industry, and automotive repair industry as of February 2019, to challenge anti-poaching agreements of franchisors.
- U.S. Congress - a series of bills were introduced in the Senate and in the House of Representatives in March and April, 2018, to prohibit anti-poaching agreements among employers (S. 2480, H.R. 5632) and non-compete covenants in employment agreements. (No distinction is made between in-term and post-term covenants) (S. H.R. 5631, S. 2782). As of February 2019, the legislation had not been reintroduced in the current Congress.

- U.S. Senate - Democratic Senators Corey Booker and Elizabeth Warren have requested that as many as 150 franchisors with more than 500 units that are reported to have some form of anti-poaching language in their franchise agreements, to provide detailed information about their anti-poaching agreements and their justification for the language. (June 2018) As of February 2019, the legislation had not been reintroduced in the current Congress.
- Small Business Administration Franchise Finance Reform (Effective January 1, 2018). Franchisors willing to sign a standard 2-page addendum to franchise agreements will have no review of their franchise agreements to determine if they are “affiliated” with their franchisees when evaluating if the franchisee is a “small business” for purposes of obtaining SBA financing. Effective February 14, 2017, in addition to of the prescribed 2-page addendum, franchisors may qualify for SBA programs by using franchise agreement addenda approved by the SBA in 2015 or 2016. Franchisors may now negotiate new addenda directly with SBA. All SBA-eligible franchises are listed on SBA Franchise Directory that SBA maintains. Annual review of Franchise Agreements and Addenda is no longer required by SBA. Franchisors with negotiated addenda must certify to SBA by April 30 of each year that no changes have been made to franchise agreement language that is addressed by the standard addendum. All other franchisors continue to be listed on the Directory without filing anything.

Note: 53% of new U.S. franchisees finance their franchised businesses using SBA financing in 2015.

- California AB 525 - Franchise Relationships (Effective January, 2016). Unique law requires franchisors to purchase franchisees’ assets upon termination or nonrenewal if the franchisor has the right to control the premises from which the franchisee has operated - even if franchisor has good cause for terminating the franchise. When a franchisee requests approval of a transfer, franchisor must give the franchisee a list of its standards for approving new and renewing franchisees. If the proposed transferee meets the qualifications, franchisor must approve the transfer.
- State Franchise/Independent Contractor Laws. The IFA has supported state laws that confirm that franchisees and franchisors are independent contractors. Eighteen states have passed such laws as of September 2017 and the IFA and similar state bills were introduced in 2018. Although they apply only to decisions affecting independent contractor status in the states, they are expected to provide evidence of a groundswell of opposition to federal regulations and decisions finding that franchisors are joint employers with franchisees.
- FTC Franchise Rule Review. The ten-year review of the entire franchise disclosure rule slated for 2018 has been authorized. Comments were requested in a notice filed February, 2019. Comment period closes April 21, 2019.
- State Franchise Relationships. Florida and Pennsylvania considered comprehensive franchise relationship legislation in 2018 but no action was taken on the bills.

Non-compete Covenants

- U.S. Congress (Introduced April 2018)

HR5631 and S2782 would prohibit the use of non-compete covenants in employment agreements. Would apply equally to both in-term and post-term covenants. Although not reintroduced in this Congress as of February 2019, in January 2019 Senator Marco Rubio introduced a bill to prohibit the enforcement of noncompete covenants in agreements with employees who are “non-exempt” (not subject to Federal wage and hours laws).

- Illinois. Noncompete covenants between employers and low wage employees (paid less than \$13 per hour) are “illegal and void.” (January 1, 2017)
- Massachusetts. Noncompete covenants in employment agreements may only be enforced against “non-exempt employees” (those not subject to minimum wage and overtime laws), must be reasonable in geographic scope, may apply for no more than 12 months following the termination of employment, may only be enforced if the employer agrees to pay the employee at least 50% of his/her highest wages averaged over the 2 years preceding the termination, and must be needed to protect the employer’s confidential information, trade secrets or goodwill. “Employee” is defined to include “independent contractors,” so the extent of its scope could include business entities which are franchisees. Applies to agreements entered into on or after October 1, 2018.

© Gray Plant Mooty 2019

GP:4844-9080-8395 v25