

# 2017 FRANCHISE Public Policy Platform

Main Street businesses, including local franchise businesses, are a pillar of job creation. America's 733,000 franchise establishments support nearly 7.6 million direct jobs, \$674.3 billion of economic output and 2.5 percent of the Gross Domestic Product (GDP). While the franchise industry is projected to grow faster than the overall economy, adding over 11,500 new franchise establishments and 250,000 direct jobs in 2017, the industry continues to face significant public policy threats that put the franchise business model at risk. The franchise industry would see additional growth if the following policy changes were to be enacted:

## **Preserve the Franchise Business Model: The "Joint Employer" Standard**

Local franchise owners take great pride in running their businesses, contributing to their communities, and providing employment and training to more than 7.6 million employees across the U.S.

Unfortunately, the National Labor Relations Board in 2015 issued *Browning-Ferris Industries of California, Inc (BFI)*, the decision which overruled more than thirty years of bipartisan employment law precedent. The NLRB replaced the predictable and clear "direct and immediate control" standard for determining joint employer status with a vague test based on "indirect" and even "unexercised" control over workers' terms and conditions of employment. The decision exposed franchise businesses to workplace liability for another employer's actions and for workers they do not employ. Specifically, franchise owners are facing more operational and legal costs, decreased business values, less compliance assistance from franchisors, less growth and fewer jobs as consequences of the new joint employer standard.

Making matters worse, other Washington agencies have also sought to capitalize on the expanded joint employment definition. During the Obama Administration, the Occupational Safety and Health Administration, the Wage and Hour Division, and the Equal Employment Opportunity Commission each took extreme positions on joint employer liability that are threatening the livelihoods of small business owners.

To promote franchising and fight back against government overreaches like these, the IFA runs the Coalition to Save Local Businesses (CSLB), a multi-industry effort to preserve the traditional joint employer standard in Washington, DC and state legislatures around the country.

The CSLB is urging Congress to pass legislation to protect local businesses by rejecting this radical realignment of traditional employment structures and ensure that franchise owners everywhere are allowed to maintain control over their operations and workforce decisions. While the Trump Administration NLRB can certainly reverse the BFI standard, Congress needs to act to provide meaningful, permanent relief to small businesses who are wondering if the franchise business model will endure against federal agencies that seek to create their own law in the future.

In addition, the CSLB has also pushed nine states – Tennessee, Texas, Louisiana, Michigan, Wisconsin, Indiana, Georgia, Utah and Oklahoma – to enact positive joint employer laws in 2015 & 2016. These laws protect and promote franchising by making clear in state law that franchise owners are responsible for their employees, just the way franchise owners want it. In 2017, many other legislatures are considering similar CSLB-supported legislation to protect franchising in their states.

## **Reject Restrictions on Franchise Business Agreements**

In recent years, several states have proposed legislation to limit the right of franchisees and franchisors to negotiate business contracts by placing unreasonable restrictions on franchise agreements. Many seek to prop up under-performing franchisees to the detriment of the entire system, and particularly disadvantage the high-performing franchisees that go to great lengths to maintain operational standards, product quality, and brand reputation. Prospective franchise owners are already protected by the Federal Trade Commission (FTC) franchise rule, extensive federally-mandated disclosures, and additional state disclosure and registration statutes, while responsible franchise sales practices have become the industry rule, not the exception. Lawmakers should exercise restraint in passing new legislation that over-regulates the contractual business relationship between franchisees and franchisors so that franchise opportunities remain available for aspiring entrepreneurs in every state.

## **Apply New Wage Laws Fairly for All Small Businesses**

Many states and cities have considered proposals to increase the hourly minimum wage within their jurisdictions. However, some of these proposals aim to require franchise businesses of all sizes to implement the wage hikes on the same schedule as large corporations, while "independent" non-franchise small businesses are allowed more time. Some policymakers are under the mistaken impression that franchise owners receive financial support from their franchisors to implement wage hikes, but this belief reflects a fundamental misunderstanding of the franchise model. Policymakers should take steps to implement new wage laws evenly and fairly, and without putting franchise businesses owners at a competitive disadvantage compared to businesses of identical size. Accommodations for small businesses should apply to all small businesses, regardless of their strategic business decision to affiliate with a national brand.

## **Promote Franchise Growth through a Revised Tax Code**

America's tax code is not working for the economy – small business owners get lost in the complex web of credits and deductions, while astronomical corporate tax rates send some businesses looking for new headquarters overseas. For years, tax reform has only been considered from the viewpoint of large corporations. However, given that 80 percent of franchise owners file their business income on their individual tax returns, individual tax rates need to be addressed to unlock the potential of America's locally-owned small businesses. Comprehensive tax reform is still needed to ensure parity of corporate and individual tax rates.

### Encourage a Market-Based Approach to the Health Care System

As franchise small businesses across the country experience challenges in offering health care assistance to their employees and face rising costs, IFA believes steps should be taken that will offer flexible and affordable solutions for employer-sponsored health care assistance. A market-based health care system would provide universal access to health insurance, rather than guaranteed or mandated coverage. Steps should be taken to promote cost-containment, such as promoting association-sponsored health programs as viable mechanisms for pooling risks and increasing market leverage for small employers. In addition, Congress should simplify and streamline reporting requirements for employers and allow for more flexibility in providing benefits to workers through expanded health savings accounts (HSAs) and health reimbursement arrangements (HRAs).

### Enhance Access to Credit for Franchise Businesses

Even though the improving economy has increased the flow of credit to small businesses in recent years, the U.S. Small Business Administration (SBA) loan guarantee programs still provide a significant source of financing for new franchise units. They are a lifeline to many small business owners in the franchise community when these small businesses cannot acquire loans

in the commercial lending market, and franchise lending has increased to record levels in recent years. In 2016 alone, SBA-backed loans to franchise businesses totaled \$770 million and were used in the financing of over 5,500 franchise businesses. As the SBA continues to evaluate its regulations and procedures, including standards for "affiliation" and loan eligibility, policymakers should ensure access to capital is unabated for all qualified small businesses.

### Increase Hiring and Entrepreneurship for Veterans

It is both a moral and economic imperative to integrate the approximately one million returning military veterans and their families into the civilian economy and serve them as honorably as they have served us. As part of IFA's Veterans Transition Initiative, or VetFran, nearly 5,200 veterans have become new franchise owners since Veterans Day 2011, and over 150,000 veterans have started careers in franchising. Congress should offer increased incentives for companies to hire military veterans while also offering assistance to veterans to continue to serve their communities as local entrepreneurs.

For more information, please visit [www.franchise.org](http://www.franchise.org) or call 202-628-8000. Follow us @Franchising411 and facebook.com/IFA.DC.

## EMPLOYMENT DISTRIBUTION BY SECTOR: 2017

Source: PricewaterhouseCoopers LLP

