THE AMERICAN FRANCHISE ACT

Franchise businesses are a significant force in the U.S. economy, generating approximately $896 billion in annual economic output and employing about **8.8 million workers** (roughly 5% of the American workforce) in 2024.[1]

Franchising is a business growth strategy that has enabled the creation of over 831,000 small businesses across the United States. The franchise business model is rooted in a simple but fundamental value proposition — **it enables aspiring small business owners to go into business for themselves, but not by themselves.** This community includes legacy brands you know and love – and others that are just getting started.

The model is founded on a relationship between a **franchisor** (or brand) and a **franchisee** (or individual business owner). It is vital to the consistency of products and services offered to consumers, the success of the system, and the value of the brand. Essentially, a franchise is a local business that licenses the branding and operational processes of the franchisor but is responsible for the day-to-day operations of its independently owned business. The local owner, or franchisee, is responsible for hiring staff, organizing schedules, managing payroll, and performing all daily operational tasks, as well as local sales and marketing. But that relationship and the opportunity it represents are under threat.

The joint employer standard determines when two entities share responsibility for violations of the National Labor Relations Act (NLRA) and Fair Labor Standard Act (FLSA) based on one entity's control of the other entity's employees. Until 2015, a company was considered a "joint employer" with another company only if it had substantial direct and immediate control over narrowly defined essential terms and conditions of employment of the other company's employees – like wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. But in 2015, the NLRB created an overly broad joint employer standard that is completely misapplied to the franchisor-franchisee context because franchises are independently operated, and no one is arguing that franchised employees belong to a franchisor. The 2015 NLRB standard cost franchise businesses over $33 billion per year, resulting in 376,000 lost job opportunities, and led to 93% more lawsuits. Over the past decade, the definition has unnecessarily become a partisan issue, changing four times, creating legal confusion, eroding trust, and stifling growth for thousands of small businesses across America.

TIMELINE

- 1980s-2015: NLRB joint employer standard is based on "direct and immediate control of essential terms and conditions of employment" (Standard #1)
- 2015-2017: Browning-Ferris decision expanded joint liability on franchise businesses (Standard #2)
- 2017: Hy-Brand decision reverted to pre-2015 standard, then decision is nullified (Standards #3 & #4)
- 2018: NLRB proposed joint employer rule based on "direct and immediate control"
- 2020: NLRB joint employer rule becomes effective (Standard #5)
- 2021: SEIU challenged 2020 NLRB joint employer rule; case ultimately stayed
- 2023: NLRB proposed new, expansive joint employer rule
- 2024: Expansive joint employer rule struck down in federal court
- 2025: SEIU revived its request for review of the 2020 rule before D.C. Circuit of Appeals

THE SOLUTION: A PERMANENT, CLEAR JOINT EMPLOYER STANDARD FOR FRANCHISES

The bipartisan, bicameral American Franchise Act modestly amends the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA) to clarify that: "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 or conditions of the employees of the franchisee." This is consistent with historical precedent and current NLRB policy.

- The American Franchise Act applies only to franchisors and franchisees alleged to be joint employers under the FLSA and NLRA. Non-franchise independent contractor relationships and other tests of multi-party liability – e.g., misclassification, single employer, agency – are not covered by the legislation.
- Franchisors are not immune from a joint employer finding under the legislation. Actions such as setting minimum standards for brand protection – including to protect the franchisor's trademarks and IP - and offering training materials or other operations resources do not amount to direct and immediate control.

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[1] International Franchise Association, 2025 Franchising Economic Outlook, Appendix, at 32-33.