



The Joint Employer Reckoning:
FEDERAL SHIFTS,
STATE SAFEGUARDS,
AND THE FUTURE OF
FRANCHISE LIABILITY

IFFA26

LEGAL

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Roadmap

- 1 Current regulations
- 2 Recent history
- 3 Strategies for risk management and collaboration

Why Is It Important?

- Joint employer risks have created major regulatory uncertainty in franchising
- Litigation costs have spiked 93% and hundreds of thousands of jobs lost due to unclear standards
- Franchisors reduced support and franchisees delayed investments amid regulatory confusion
- Ongoing uncertainty is a top challenge for the franchise business model



HOW WE GOT HERE:

Politics and the Influence of SEIU–NLRA

- NLRB standard from 1965 to 2015
 - Essential terms
 - Exercised vs. reserved control
 - Limited and routine
- *Browning-Ferris Industries of California, Inc.*
- 2020 and 2023 joint employer rules
- Continuing legal challenges and legislation

The DOL Standard

Current rule

Recent
regulations,
amendments,
and rescissions

Interpretive
guidance

Looking
forward/
proposed
new rule

The NLRB/Amazon Cases

- Important for franchising because of similar models and potential for union activity
- The Amazon model
- Amazon (foolishly) retaliated against a location that had recently unionized
- May 2023—Teamsters file an ULP claim against Amazon

The Proceedings

- NLRB ruled that Amazon was a joint employer and that they did commit ULPs.
- Since, the 3rd and 9th Circuits have agreed that the district courts don't have jurisdiction, leaving the disputes in the hands of the NLRB
- But...the 5th Circuit has found this is a dispute between employees and employers (not union), so it does have jurisdiction and would find in favor of Amazon
- Split yet to be resolved

The Proceedings (cont'd.)

- NLRB meanwhile has reverted to the prior rule about no joint-employer with “indirect control”
- All leading to a need for more clarity!
- Why should franchisors care about the Amazon cases?

American Franchise Act

- Focus on real, direct, and ongoing control
- Exclusions: general brand standards, shares training materials, or provides advice
- Aim: protect the franchise business model
 - Clearly identifying when a franchisor is considered an employer
 - Allow franchisors to enforce brand standards while franchisees run their own businesses and manage their own employees day to day

Current State Law Outlook

- Generally favors franchisors by reducing the risk of joint employer liability
- Most state laws defer to the federal definitions of "franchisor" and "franchisee"
- "Control" exception
- Pending legislation

A Path Forward to Strike the Right Balance

**Reinforce the
fundamentals
of franchising**

**The role of
the franchise
agreement**

**The franchise
relationship**

**Principles to
emphasize**

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