



CONGRESS MUST PROTECT U.S. EMPLOYERS BY PASSING THE SAVE LOCAL BUSINESS ACT (H.R. 3185/S. 1636)

August 26, 2021

Dear Member of Congress,

On behalf of the undersigned organizations and the millions of members, supporters and activists across America whom we collectively represent, we write to urge your support for the [Save Local Business Act](#) (H.R. 3185/S. 1636), which would preserve decades of commonsense labor law norms and protect our nation's employers against a Biden Administration order that radically redefines the nature of employment to the detriment of struggling businesses across the nation.

Under longstanding court precedent and National Labor Relations Board (NLRB) interpretation, an "employer" for purposes of applying the nation's labor laws is generally defined to include only those businesses that determine the essential terms and conditions of employment. As a textbook illustration, imagine a franchise arrangement whereby the franchisee determines whom to hire, whom to fire, wages and other everyday working conditions. The distant franchisor, in contrast, obviously cannot interview every potential franchisee employee, make each individual hiring decision or micromanage its franchisees' working conditions.

That's precisely why an appellate court ruled in *NLRB v. Browning-Ferris Industries* (1982) that the appropriate standard for defining "employer" was established by the U.S. Supreme Court in *Boire v. Greyhound Corp.* (1964). Specifically, it held that only businesses exercising control over "those matters governing the essential terms and conditions of employment" were subject to collective bargaining requirements and liabilities. Two years later, the NLRB formally adopted that standard, ruling in separate cases that "there must be a showing that the employer meaningfully affects matters relating to the employment such as hiring, firing, discipline, supervision and direction." In other words, an "employer" for purposes of labor law requires direct and immediate control over the terms and conditions of employment.

That stands to reason, since it makes no sense to impose legal liability upon employers that don't actually control a bargaining unit's employment conditions.

In August 2015, however, the Obama Administration's NLRB suddenly and needlessly upended that established legal standard by imposing what's known as the "Joint Employer Doctrine." The Joint Employer Doctrine means that multiple businesses could now be held legally liable for the same employee. Under that radical departure from logic and established law, even employers



with indirect or even merely potential ability to affect employment terms could suddenly find themselves subject to federal labor law mandates.

That instantly jeopardized hundreds of thousands of franchise businesses across America and the millions of people they employ, and constituted a gift to union bosses and liberal politicians who receive union campaign donations. With union membership declining and their ability to influence elections progressively waning, they're desperate for methods to retain power and dollars.

In 2020, the NLRB formally rejected the Obama Administration attempt to redefine the law. Today, however, the Biden Administration [seeks](#) to reverse field yet again and reimpose the chaotic Joint Employer Rule of the Obama Administration NLRB.

That's why the Save Local Business Act is of such immediate importance. It would rightly define "joint employers" as those that "directly, actually, and immediately exercise significant control over the essential terms and conditions of employment." Today, hundreds of thousands of franchise enterprises exist in the United States, accounting for nearly 7.6 million jobs. And according to an American Action Forum study, the Joint Employer Rule could reduce private sector employment by nearly 2 million jobs, including 500,000 in the leisure and hospitality industry alone. In addition to the direct impact of jobs lost, that also translates to taxpayer pain in the form of more unemployment payments, Medicaid enrollment and other forms of government assistance.

The Save Local Business Act would spare those employers and employees the Biden NLRB's attempted joint employer redefinition, and preserve established judicial and NLRB precedent by subjecting only actual employers exercising direct and immediate control over the essential terms and conditions of employment to federal collective bargaining liabilities.

It's grossly unfair and illogical for the Biden Administration to extend federal labor requirements to businesses that do not hire, fire, set wages or supervise employees, and it jeopardizes thousands of businesses and potentially millions of American jobs. Congress can take an easy and important step toward improving economic and employment conditions by passing the Save Local Business Act. Accordingly, we urge you to support H.R. 3185 and S. 1636, the Save Local Business Act.

Thank you very much for your attention to this critical matter.

Sincerely,

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