

November 14, 2023

Dear Member of Congress,

Small business needs protection. As you are aware, the National Labor Relations Board (NLRB) issued their final rule “Standard for Determining Joint Employer Status” on October 27, 2023.¹

Through this rule the NLRB rejected the traditional understanding of the joint employer standard. The result will be direct harm to entrepreneurs, small businesses, and their employees.

However, a bipartisan legislative effort to nullify the rule using congressional power under the Congressional Review Act (CRA) is underway. This effort is led by Senator Bill Cassidy (R-La.),² Senator Joe Manchin (D-W.Va.), and Congressman John James (R-Mich.),³ and it aims to protect American small businesses, workers, and consumers from this harmful bureaucratic action.

Longstanding precedent has held that two businesses should only be held as jointly responsible for the same set of employees if they both exert direct and immediate control over key aspects of employment. This framework allowed business models like franchising and temporary work arrangements to thrive, creating jobs, boosting economic productivity, and enabling many Americans to become first-time small business owners.

The new rule issued by NLRB, however, puts these benefits in jeopardy by forcing businesses to be held as joint employers on the basis of “indirect control,” or even on the basis of theoretical control which has never been exercised. Studies analyzing a similarly expansive rule from 2015 indicate that franchise businesses could have seen billions of dollars in economic losses and hundreds of thousands of lost job opportunities as a result of the rule.⁴

In an economic environment already destabilized by inflation and overregulation, America’s small businesses cannot afford for the NLRB to push forward with more costly mandates.

As the branch of government most representative of and responsive to the people, Congress is tasked with protecting Americans from bureaucratic overreach and the economic devastation that may accompany it. We hope you will think about small businesses and what is best for their employees when considering the joint resolution of disapproval to reverse the NLRB’s overreach on the joint employer standard.

Signed,

¹ <https://www.federalregister.gov/documents/2023/10/27/2023-23573/standard-for-determining-joint-employer-status>

² https://www.help.senate.gov/imo/media/doc/nlrb_cra_text.pdf

³ https://edworkforce.house.gov/uploadedfiles/nlrb_cra_text.pdf

⁴ <https://www.franchise.org/sites/default/files/2019-05/JE%20Econ%20Impact%200128.pdf>



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