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The American Franchise Act: Re-Defining Joint Employer Liability

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Understanding joint employer liability is critical for companies in the franchise sector, as it directly impacts risk management and compliance. If the American Franchise Act (AFA) were enacted, it would provide significant guidance to franchisors and franchisees regarding the circumstances under which either party would be considered a joint employer, and thus potentially liable for employment law violations committed by the other party.

Current Joint Employer Standard Under the NLRA

Under current interpretations of the National Labor Relations Act (NLRA), one employer can be deemed a joint employer and held liable for an unfair labor practice (ULP) caused by another employer if the first employer has some degree of control over the employees of the second employer. This broad standard has led to uncertainty for franchisors and franchisees, particularly where brand standards intersect with employment practices. For example, franchisors often impose certain employment requirements on franchisees to maintain the franchisor's brand and image. However, if a franchisor exercises direct and immediate control over essential terms and conditions of a franchisee employee's job, joint employer liability may arise. The key legal question is: How much control must a

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franchisor exercise before it is considered a joint employer?

Congressional Intent: Balancing Franchise Standards and Independence

A bipartisan group of United States House Representatives introduced the AFA (H.R. 5267) in September 2025. The bill began with 14 original co-sponsors and has since grown to 70. Their stated intent is "to preserve the franchise business model" by amending the NLRA and creating a new Section 20 entitled "Clarification Of Joint Employment For Franchising." Congressional findings supporting the AFA recognize both the need for franchisors to set and enforce uniform quality, marketing, and operational standards, and the independence of franchisees as business owners. To harmonize these potentially conflicting concepts, the AFA proposes that a franchisor would only be considered a joint employer of the employees of the franchisee if it both possesses and exercises "substantial direct and immediate control" over one or more essential terms and conditions of employment of the franchisee's employees. The AFA defines "substantial direct and immediate control" as having a regular or continuous effect on essential terms and conditions of employment, excluding effects that are sporadic, isolated, or de minimis. In other words, only ongoing, significant involvement, not occasional or minor actions, would trigger joint employer status.

Defining "Substantial Direct and Immediate Control"

The AFA provides specific examples of what constitutes "direct and immediate control" by a franchisor over the following essential terms and conditions of employment:

1. **Wages:** Actually determines the wages to be paid to individual franchisee employees.
2. **Benefits:** Actually determines the fringe benefits to be provided to franchisee employees, including

selecting the benefit plans or the level of benefits.

3. **Hours of Work:** Actually determines the work schedules, hours of work, or overtime of franchisee employees (this does NOT include establishing the franchisee's operating hours or minimum staffing levels).
4. **Hiring:** Actually determines who will be hired (this does NOT include minimum staffing levels or hiring standards).
5. **Discharge or Discipline:** Actually determines who will be terminated or how an employee of the franchise is disciplined (this does NOT include informing the franchisee of misconduct or poor performance, expressing negative opinions, or requiring minimal standards of work).
6. **Supervision:** Consistently instructs franchisee employees or issues performance appraisals (this does NOT include providing limited instructions, training materials, or performance standards, or specifying what work to perform without directing "how" to perform it).
7. **Direction:** Assigns work schedules, positions, and tasks (this does NOT include providing resources to franchisees to use regarding these issues).

Status of the AFA and Next Steps

As of this writing, the AFA has been referred to the House Committee on Education and Workforce. Its future progress remains to be seen. While the outcome of this legislation is uncertain, it is important for companies in the franchise industry to understand the potential impact of the AFA and to prepare for possible changes. The following key points summarize what the AFA could mean for franchisors and franchisees:

- The AFA, if enacted, would narrow the circumstances under which franchisors are considered joint employers.
- Only substantial, ongoing, and direct control over essential employment terms would create joint

employer liability.

- HR and legal teams should monitor developments and review franchise agreements and operational practices to ensure compliance with evolving standards.

For guidance regarding joint employer liability in the franchise industry, contact your Akerman Labor and Employment Attorney.
