COALITION FOR A
DEMOCRATIC WORKPLACE

Stop the Attack on Small and Local Businesses

Over the past decade Democrats in Congress and on the NLRB have tried to make drastic changes to the joint employer standard under the NLRA. In March 2025, House Democrats reintroduced the PRO Act, which would impose an expansive joint-employer standard across the economy, and in October 2023, the NLRB issued a final rule that pushes the standard beyond all previous proposals. The standards they are pursuing would disrupt decades of established law and threaten the ability of individuals to achieve the American Dream of owning their own business. The Trump administration and Republicans on the NLRB and in Congress must stop this assault on small businesses.

THE NEW JOINT EMPLOYER STANDARD THREATENS SMALL AND LOCAL BUSINESSES:

In March 2025, Democrats in the House of Representatives reintroduced the Protecting the Right to Organize (PRO) Act (H.R. 20, S. 852). Included among the myriad drastic labor policies within the bill is a provision that dramatically expands the joint-employer standard. Additionally, in October 2023, the National Labor Relations Board (NLRB) issued a final rule that pushes the standard beyond anything we've seen previously. In March 2024, the U.S. District Court for the Eastern District of Texas invalidated the rule in response to a lawsuit filed by CDW and eleven other business entities, and the NLRB since then has abandoned its efforts to defend its misguided rule in court.

The joint-employer standard under the National Labor Relations Act (NLRA) is used to determine when two or more entities are jointly responsible for the terms and conditions of employment over a shared group of employees. These terms and conditions include, but are not limited to, having the ability to hire, fire, discipline, supervise, or direct employees. Joint employers are responsible for bargaining with any union representing the joint employees and are mutually liable for any NLRA violations either entity commits with respect to those employees. Joint-employer status, therefore, results in significant changes to an employer's liabilities and responsibilities under the law.

Under the traditional, decades-old standard, entities can only be joint employers if they exercise direct and immediate control over the essential terms and conditions of employment. This standard provided clarity for businesses and protected them from unnecessary involvement in labor negotiations and disputes involving workplaces over which they do not have such control. This is especially necessary in today's world, where large and small businesses alike have contractual relationships with dozens, hundreds, or even thousands of franchisees, vendors, and contractors.

Under the PRO Act and the final rule from the NLRB, however, the joint-employer standard would cover companies that shared only indirect or even just unexercised potential control over the terms and conditions of employment. This standard was originally conceived by the Obama-era NLRB in its 2015 *Browning-Ferris Industries* (*BFI*) decision. Under the *BFI* standard nearly every contractual relationship could potentially trigger joint-employer status, from the franchise model to relationships between contractors and subcontractors and suppliers and vendors, needlessly exposing vastly more businesses to unwarranted joint-employer liability.

The Board's new final rule goes further than both the PRO Act and *BFI* standard in that it would have required a joint employer determination based on reserved or unexercised control in certain circumstances.

The franchise model, which is rooted in the traditional joint-employer standard, allowed individuals to open their own small business with the support of the larger, more experienced franchisor. The franchisor provided the business model, well-known logo, and some assurances and support, but the franchisee was responsible for making the individual business succeed and was liable for its business practices. The new standard, however, could potentially impose significant liability on the franchisor, forcing them to protect themselves by ending and/or limiting their support to their franchisees or exerting increased authority over them, essentially converting those small business owners into employees.

Additionally, the traditional standard allowed larger businesses to rely on goods and services provided by local businesses without facing uncertainty around joint-employer liability. Under the expanded standard, however, larger companies would be more likely to subsume local small businesses rather than work with individually owned enterprises, stifling entrepreneurship, business innovation, and flexibility. The new standard also hampers businesses' efforts to encourage "corporate social responsibility" among franchisees, contractors, and vendors to the detriment of workers, consumers, and their communities.

To make matters worse neither the PRO Act, the *BFI* decision, nor the new rule defined key terms or provided guidance as to how to implement the new standard, resulting in massive uncertainty for the business community. This lack of clarity resulted in the US Court of Appeals for the DC Circuit returning the *BFI* case to the Board. The DC Circuit also criticized the *BFI* standard for ignoring the crucial step in the joint-employer analysis – that in order to qualify as a joint employer, an employer must possess sufficient control over the essential terms and conditions of employment to permit meaningful bargaining.

CURRENT STATE OF PLAY

Efforts to expand the joint-employer standard have taken several hits recently. The PRO Act is not expected to advance in the 119th Congress, and the Board's final rule was invalidated by the District Court. That said, Democrats in Congress and on the Board will likely continue to pursue the changes.

Moreover, a bipartisan group of members of Congress pursued legislation to overturn the final rule via a Congressional Review Act resolution (H.J.Res. 98, S.J.Res. 49, 118th Congress). The resolution successfully passed both chambers of Congress, but then-President Biden vetoed it. If enacted, the final rule would have been nullified, and the Board would have been prohibited from issuing a substantially similar rule in the future.