

NLRB Move Will Hurt Businesses

By Todd Maisch, President & CEO

Illinois Chamber of Commerce



If you're in business, would you want to be held liable for some other company's employees? What about the employees of every business that you are even tangentially connect to? Last Thursday, the National Labor Relations Board (NLRB) took action-without legislative authority or by any process-through a case, *Browning Ferris*, that makes all of that closer to reality.

The NLRB's actions make the following scenarios possible:

- A restaurant is fined for labor violations by a food supplier because the restaurant is the sole source of funding for that supplier, even though the restaurant was not part of labor negotiations.
- A software company is successfully sued over actions by a subcontractor because the company has vaguely-defined influence over the subcontracting company.
- Despite a booming business, a local printing franchise cannot hire more staff due to strict employment caps by its franchiser in another state.

We're seeing a dramatic increase in the number of federal rules and regulations impacting the ability of businesses to operate. Each day, business leaders are focusing more on paperwork and vague goals. And it just got worse. The NLRB has now taken action that threatens small business owners across the country by deciding to change the definition of "joint employers", upending legal precedent and adding to the list of burdens that impact businesses-particularly franchises.

Browning Ferris discards the existing joint employer relationship that exists when two legally separate businesses are deemed jointly liable for employment-related claims. Under the ruling of *Browning Ferris*, the well-established legal standard is tossed aside in favor of one in which almost any economic or contractual relationship could be used to show joint employer status.

This change in the existing reasonable separation of entities is under attack by the NLRB and organized labor since that definition made widespread unionization of these entities difficult. What organized labor would like to see is a new model that ties franchisees with franchisers. In short, the NLRB and organized labor want to hold businesses liable for employees they do not actually employ.

What this means is increased litigation, increased costs to do business, and more complex business relationships. A subcontractor or franchise owner of a restaurant or coffee shop that is unionized could result in the larger company being forced to the bargaining table, along with every other franchise owner of that company. The goal of the NLRB and organized labor is national labor agreements with every franchise owner, regardless of local laws. This threatens employer and employee freedom and needs to be stopped.

At risk is the over 770,000 franchise businesses across the U.S. that employ more than 8 million people, generating \$844 billion in output. Franchising allows individuals to open their own businesses and embrace the entrepreneurial spirit of our country. Furthermore, they should be allowed to make the

agreements that make sense for them, not adhere to a one-size-fits-all standard that does not provide the necessary flexibility for individual circumstances.

Also at risk are the thousands of companies that operate as subcontractors. Subcontractors are often quickly brought in and out of a project due to their expertise. However, changes to the definition of joint employer would also impact these companies. The NLRB has already determined that a company can be held liable for the hiring or firing of subcontracting employees, even if the primary company was not part of labor negotiations.

These efforts are not limited to the federal level. In California, state legislation recently signed into law re-writes the joint employment relationship. The sponsor's goal of this legislation was to eliminate subcontracting by extending liability to a third party that did not commit any violations and does not control working conditions, the work environment, employee schedules, or payment. In addition, the recently-enacted minimum wage ordinance in Seattle discriminates against franchise owners by defining nearly all local franchise business owners as big businesses, effectively punishing local small businesses.

The Illinois Chamber of Commerce is working with allies across the country against this misguided and unfair regulation. We have asked members of our congressional delegation to engage with the NLRB to ensure that any proposed changes go through the regular process, and not changed through case law as the NLRB intends. Changing any definition or regulation through case law does not provide the public or impacted parties the opportunity to comment and provide input as to how changes will impact them.

You can help. Businesses need to contact their congressmen and tell them to fight back against this overreach by the NLRB. Businesses should also contact Attorney General Lisa Madigan's office and ask for her to join with dozens of other attorney generals across the country who advocate for small businesses and want to maintain the existing definitions.

The NLRB must recognize that its actions, taken without any legislative authority, go beyond the scope of its duties and threaten the ability of Americans to open their own business. If the goal is to destroy hundreds of thousands of businesses and millions of jobs, the federal government is going to be overwhelmingly successful. Don't let this continue.

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Illinois Chamber of Commerce | 215 E Adams St | Springfield | IL | 62701
Contact Todd Maisch directly at tmaisch@ilchamber.org