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Proposed American Franchise Act Would Bring Sanity to “Joint Employment” Standard in Franchising

A bipartisan group in the U.S. House of Representatives introduced the American Franchise Act (H.R. 5267), on Sept. 10, 2025, taking direct aim at the standard for determining when franchisors may be considered joint employers of a franchisee’s employees under the National Labor Relations Act (NLRA) and Fair Labor Standards Act (FLSA). If enacted, the Act would bring clarity — and sanity — to what has become a long-volatile area of law.

Years of Legal Whiplash

The past decade has witnessed wild swings in how joint employment is evaluated under the NLRA, the federal law governing collective bargaining and certain labor practices, and the FLSA, the federal wage-and-hour law.

Through agency rulemaking and court challenges, the legal standard has bounced between a focused test — based on whether a putative joint employer actually exercised “direct and immediate control” over essential employment terms and conditions — to an expansive standard that considered indirect control and the right to control, even if never exercised. And with each change in presidential administration, this test has flipped back (and back and back again).

These swings create serious uncertainty for franchise businesses. Broad interpretations of joint employment expose franchisors to potential joint liability, based solely on a franchisor exercising the kind of brand standards and control inherent to franchising. Meanwhile, the constant regulatory flux makes it difficult for franchise businesses to structure their operations or assess risk with certainty.

What the Act Would Do

The Act would amend the NLRA and FLSA to adopt a clear, consistent test: a franchisor could only be deemed a joint employer if it “possesses and exercises substantial direct and immediate control over one or more essential terms and conditions of employment of the employees of the franchisee.”

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Under the Act, “substantial direct and immediate control” would mean having “direct and immediate control that has a regular or continuous consequential effect on an essential term and condition of employment of a franchisee’s employees” as opposed to sporadic, isolated or de minimis control. The Act would limit the list of “essential terms and conditions of employment” to wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction.

Implications for Franchise Businesses

If enacted, the Act would lock into law a common-sense standard for determining franchisor joint-employer liability under the NLRA and FLSA — protecting franchise businesses from the ever-present risk of new rulemaking with each change in White House leaderships. The Act only applies to the franchisor-franchisee relationship and does not affect joint employer determinations outside of franchising.

At Polsinelli, we will continue to monitor the progress of the proposed American Franchise Act. For guidance on how the Act may affect your franchise model, labor structure or exposure to joint-employer liability, please contact the authors or your regular Polsinelli attorney.