

Shifting Landscape: The Evolving Definition of Joint Employers

Insights

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The National Labor Relations Board and various union-backed organizations are ratcheting up efforts aimed at changing the landscape of who qualifies as a joint employer. Right now, these aggressive efforts are most pronounced in the franchise industry where the NLRB and other organizations continue to push an agenda of making franchisors, McDonald's for example, joint employers with franchisees. As part of this ongoing campaign, the NLRB's general counsel issued a ruling finding that McDonald's should be treated as a joint employer with franchisees. Likewise, union-backed organizations such as Fast Food Forward are pushing ahead with filing unfair labor practice charges against both franchisors and franchisees under the theory they are joint employers. From all indications, these efforts will continue in earnest at the agency level and through potential legislation intended to reverse any binding decisions by the NLRB or other agencies that franchisors are joint employers with franchisees.



If the multipronged effort to redefine joint employers to include franchisors are successful it will represent a seismic change to the franchise business model. Corporate entities such as McDonald's, Dominos and others would no longer enjoy the traditional insulation from the conduct of franchisees. On the labor front, for example, employees of franchisees could organize into a single bargaining unit and collectively attempt to negotiate a collective bargaining agreement. Similarly, franchisors and franchisees could be held jointly liable for potential OSHA violations at a particular franchise location and on discrimination claims brought by employees of franchisees. In short, the well developed and highly successful business model of independently owned and operated franchises would be put at risk if franchisors are deemed joint employers with franchisees.

This is an ongoing fight that the Service Employees International Union and other union-backed organizations are aggressively pursuing in an effort to collectively organize the workforce of franchisees. Individuals and businesses interested in maintaining the well established franchise business model must make their voices heard and push back against the movement to expand the scope of who qualifies as a joint employer.