

February 15, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20515

The Honorable Charles E. Schumer
Democratic Leader
United States Senate
Washington, D.C. 20515

Dear Leaders McConnell and Schumer:

The undersigned associations representing millions of job creators in every industry and sector of our nation's economy urge the U.S. Senate to address the growing confusion and harm to our economy caused by the lack of legislative definitions for "joint employer" in the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA). We recommend that the Senate take up the House-passed "Save Local Business Act" (H.R. 3441) as soon as practicable.

In 2015, the National Labor Relations Board (NLRB) issued *Browning-Ferris Industries of California, Inc. (BFI)*, overruling more than thirty years of bipartisan precedent. The Board replaced the predictable and clear "direct and immediate control" standard for determining joint employer status with a vague test based on "indirect" and "potential" control over workers' terms and conditions of employment. The decision exposed a broad range of contractors and subcontractors, and franchisors and franchisees, to workplace liability under the NLRA for another employer's actions and a potential obligation to collectively bargain with workers they did not employ. While the NLRB recently restored the "direct and immediate control" standard for joint employment in its December 2017 *Hy-Brand* decision, only Congress can enact a permanent solution that locks in this sensible definition for joint employer.

Under the FLSA, there are currently as many as eight different federal circuit court definitions for joint employment. Complicating the matter, the U.S. Supreme Court recently declined to hear a case that would have addressed this issue, thus eliminating the possibility of a judicial solution. Without a unified national definition, businesses operating in multiple federal circuits will face varying interpretations of what it means to be a joint employer under the FLSA.

Responding to these very serious problems of confusion and expansion of joint employment liability, the U.S. House of Representatives passed the bipartisan Save Local Business Act that simply establishes clear definitions for joint employment under the NLRA and FLSA. Under the bill, an employer may be considered a joint employer of a worker only if it "directly, actually, and immediately" exercises significant control over the primary elements of employment, such as hiring, firing, determining pay, or supervising employees on a routine basis. Enactment of H.R. 3441 would provide certainty for small business owners and other employers in all industries, while clarifying protections for American workers.

We believe the U.S. Senate should take this opportunity to stabilize the definition of joint employment in these two key workplace laws by passing the Save Local Business Act.

Sincerely,

American Fire Sprinkler Association
American Foundry Society
American Hotel & Lodging Association
American Staffing Association
American Supply Association
Arkansas State Chamber of Commerce
Asian-American Hotel Owners Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors
Association of Kentucky Fried Chicken Franchisees (AKFCF)
CAWA – Representing the Automotive Parts Industry
Franchise Business Services
Global Cold Chain Alliance
HR Policy Association
Independent Electrical Contractors
International Council of Shopping Centers
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
KFC Montana
MSPA Americas
NATSO, Representing America’s Travel Plazas and Truckstops
National Association of Home Builders
National Association of Professional Employer Organizations
National Club Association
National Council of Chain Restaurants
National Federation of Independent Business
National Franchise Association
National Multifamily Housing Council
National Restaurant Association
National Retail Federation
National Waste & Recycling Association
Private Care Association, Inc.
The Real Estate Roundtable
Retail Industry Leaders Association
Small Business & Entrepreneurship Council
Society for Human Resource Management
Truck Renting and Leasing Association
U.S. Chamber of Commerce

CC: Members of the United States Senate