Offit | Kurman®

The American Franchise Act Could Secure the Future of Franchising in the U.S.

December 3, 2025
By David Cahn

A bill pending before the U.S. House of Representatives, if signed into law, would finally establish clarity on how and when employer responsibility is shared by franchisors and franchisees under the National Labor Relations Act and the Fair Labor Standards Act. The "joint employer" issue, which has cast a cloud over franchising's continued viability in the U.S. since the Obama Administration, can finally be resolved in the long-term if this 119th Congress passes the bill. The current President has publicly committed to signing it into law if it comes to his desk.

The American Franchise Act, H.R. 5267, states, "a franchisor may be considered a joint employer of the employee of a franchisee only if the franchisor possesses and exercises substantial direct and immediate control over one or more essential terms or conditions of the employees of the franchisee." It sets forth, in some detail, the essential terms and conditions of employment, the level of control that the franchisor must exert over the term or condition (such as wage rates), and examples of assistance or guidance provided by a franchisor concerning an employment term or condition that do not constitute control.

The bill's original 14 cosponsors were seven Republicans, including U.S. Rep. Kevin Hein of Oklahoma, a former McDonald's franchisee, and seven Democrats, including U.S. Rep. Hillary Scholten of Michigan, who said the bill will help the franchise model, which she called an "economic powerhouse" for entrepreneurs. "This bill will bring the clarity small business owners need to continue creating jobs and building up our communities," Scholten said in a statement. "The franchising model is unique. It requires a tailored approach that properly recognizes the relationship between franchisors and franchisees."

Representative Scholten noted the uncertainty with shifting regulations "is costly to our entrepreneurs," and the AFA "provides a clear path forward so they can focus on running their businesses."

The uncertainty to which Rep. Scholten refers is that, under a broader standard for finding a franchisor to be the "joint employer" of the franchisee's employees, many or most franchisors would be at risk of sharing liability with franchisees on matters such as labor and wage-and-hour law violations. They might also have a legal obligation to negotiate with unions.

The most recent uncertainty on the issue occurred in 2023 and 2024, when the National Labor Relations Board ("NLRB") promulgated a regulation defining joint employment in a broad fashion nearly identical to the rule issued during the Obama Administration. The International Franchise Association, the U.S. Chamber of Commerce, and other groups challenged the rule's legal validity in court. A U.S. District Court judge struck down the rule in March 2024, and the NLRB did not appeal the ruling. In addition, both houses of the last (118th) Congress approved a bill to reverse the NLRB's regulation, utilizing the Congressional Review Act, including the U.S. Senate which then had a Democratic majority. However, President Joe Biden vetoed the bill in May 2024.

An important effect of the uncertainty caused by expansive joint employer definitions has been to discourage franchisors from providing their franchisees with valuable tools and guidance for recruiting and managing their workforce, thereby eroding the value of the franchise for the franchisees themselves. In addition, the possibility of future administrations enacting a broad joint employer definition has a chilling effect on the continued success of the franchise model as a growth vehicle. In the absence of legislation, which is more difficult to overturn than regulations, the reticence of a quality brand to franchise will deprive potential franchise buyers of opportunities to develop successful locations of famous brands in their communities.

The American Franchise Act now has 48 co-sponsors in the House of Representatives, including 12 Democratic representatives. This 119th Congress is the best chance to enact this type of legislation. To learn how to support it by telling your positive franchising story, please go to Joint Employer - International Franchise Association.