

NATIONAL LABOR RELATIONS BOARD: EXPANDED DEFINITION OF JOINT EMPLOYER



BACKGROUND

In July of 2014, the General Counsel of the National Labor Relations Board (NLRB) authorized the Board's Regional Directors to name McDonald's USA LLC as a "joint employer" in complaints by employees against franchisees. The determination paves the way for a franchisor to be held liable for the actions of independent franchisees. For thirty years, the legal standard for joint employment has required that any potential employer must control the conditions of employment including: hiring, firing, compensation, benefits, hours, disciplinary procedures and supervision. In the hotel franchise business model, hotel franchisees are the sole employer, because hoteliers maintain exclusive control over these conditions of employment. If franchisors became legally responsible for franchisees' actions relative to their employees, franchisors would be compelled to try to establish control over staffing decisions and daily operations in an effort to avoid liability. In that case, franchisees would lose their independence and become de facto employees of the franchisor.

The Franchise Business Model and the Importance of Franchising

- In the lodging industry, franchisees are independent owners and operators of their respective hotels and franchisors collect licensing fees for the use of their brand names and ensure consistent quality
- Hoteliers responsibilities include: identifying the market, securing financing, purchasing the land, establishing contracts, scheduling inspections, setting prices, establishing staffing needs, undertaking all of the financial risk, and running the daily operations of the business
- Franchisors provide guidelines for construction, layout, design, and décor; conduct national marketing campaigns, develop training for management, and generally offer guidance to ensure consistent brand quality
- Franchisors charge a onetime licensing fee and collect monthly royalties of gross revenues. Net profits remain with the franchisee
- Franchised small businesses across the United States employ over 8.5 million American workers
- There are more than 770,000 franchise locations in the United States
- Nearly 80% of the over 20,000 properties owned by AAHOA members are franchised hotels
- Franchising creates opportunities for entrepreneurship and small business ownership

AAHOA's Concerns over an Expanded Definition of Joint Employer Status

- Would compel franchisors to take an active role in staffing decisions due to potential for liability
- Franchisors are large public companies with different motives and goals than small business owners
- Disagreements over staffing decisions, promotions, wages and labor costs could add strain to the relationship between franchisees and franchisors
- Franchisees would lose independence in decision making and may essentially become employees of the franchisor
- Due to added participation and control, franchisors may increase fees and royalties
- Countless jobs may be lost or never created, because this rule would discourage business expansion and entrepreneurship