



December 7, 2022

Lauren M. McFerran
Chair
National Labor Relations Board
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Washington, D.C. 20570-0001

John F. Ring
National Labor Relations Board
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Gwynne A. Wilcox
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David M. Prouty
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Re: Standard for Determining Joint Employer Status [87 FR 54641 Docket 2022-19181]

Dear Chairwoman McFerran, Mr. Ring, Mr. Kaplan, Mr. Prouty, and Ms. Wilcox:

The Association of Women's Business Centers (AWBC) welcomes the opportunity to respond to the National Labor Relations Board's (NLRB) proposed standards for determining joint employer status.

AWBC is a national non-profit 501(c)(3) organization, founded in 1998, that works to secure economic empowerment and entrepreneurial opportunities for women by supporting and sustaining a national network of women entrepreneurs and program staff for more than 146 Women's Business Centers (WBCs) across the nation. As Small Business Administration resource partners, WBCs help women start and grow small businesses by providing counseling, training, mentoring, networking opportunities, and access to capital.

The Women's Business Center program is a public-private partnership with 35 years of success in supporting women entrepreneurs. WBCs are hosted by a myriad of non-profit entrepreneurial development organizations and community lenders that serve economically and socially disadvantaged clients, in as many as 38 languages. While each WBC operates out of a brick-and-mortar location, many have opened additional satellite locations, and all offer virtual services.

AWBC provided comment on October 20, 2022, during the Small Business Administration (SBA) Office of Advocacy's virtual roundtable on the NLRB's proposed rule. Following this roundtable, the Office of Advocacy submitted comments on November 29, 2022, calling for the NLRB to revise the ruling to be less ambiguous and provide more guidance for the small business community and those utilizing contracting. We agree with the SBA Office of Advocacy's sentiments and share many of the same concerns.

This comment captures the issues AWBC raised during this roundtable and the feedback on the proposed rule from our community serving American women entrepreneurs.



Authority of Control

A large concern remains around Section 103.40(c) on the issue of essential terms, where joint employer status can be triggered if “an employer to possess the authority to control (whether directly, indirectly, or both), or to exercise the power to control (whether directly, indirectly, or both), one or more of the employees’ essential terms and conditions of employment.” This rule would call into question not only issues such as compensation and benefits, but scheduling, health and safety, assignments, and more.

The standard for this rule is based on liability for businesses that have the “authority to control” employees, leaving significant unpredictability and risk for small businesses that utilize contractors.

Women in Franchising

We are also concerned that this proposed rule would fundamentally change the franchising model for women, and all franchisees, therefore deterring women away from this industry. When surveying franchisees, a report by Oxford Economics showed that more than 32% of all respondents that were women stated they would not own a business if they were not franchisees.¹ Under the existing model, women are increasingly turning to franchising in an entrepreneurial pursuit, where they are able to make their own employment decisions and have a significant amount of autonomy over their stores’ operations. The rule in its current form would diminish the controls of franchisees and impede the pathway to ownership, ultimately driving women away from franchising.

The impact on the franchisee-franchisor relationships would significantly change and create a barrier to entry for women entering the franchisee industry – especially considering that women on average are more risk-adverse in nature. With more women coming through women’s business centers (WBCs) across the nation that are utilizing franchising or contracting, many are considering succession planning if this rule becomes law.

Underestimated Compliance Cost

Finally, when outlining the “essential terms and conditions of employment”, the NLRB’s compliance cost of one hour for every small business at \$150 dollars is not representative in time allocation or amount that would be necessary for small businesses to ensure they remain compliant. Companies would likely have to hire a full-time employee dedicated to this endeavor, such as an individual responsible for administering the rule or a lawyer focused on contract labor laws.

Thank you for your interest in receiving feedback, AWBC looks forward to continued engagement with the National Labor Relations Board on this rule’s impact on the women-owned small business community.

Sincerely,

Corinne Goble Hodges
CEO
Association of Women’s Business Centers

¹ Oxford Economics. (2021). (rep.). *The Value of Franchising*. Retrieved from <https://www.oxfordeconomics.com/resource/The-value-of-franchising/>.