

WHAT ARE THE NEW RULES OF THE "JOINT EMPLOYER" GAME?

The new rules are unclear. The traditional "direct and immediate" control standard provided businesses with clarity about their legal obligations. In the aftermath of the National Labor Relations Board's decision to adopt a new legal test under the *Browning-Ferris* case (August 2015), a joint employer is now anyone who exercises indirect, potential, or unexercised reserved control.

You Might be a **Joint Employer** If...

You require all contractors to offer 15 days of PAID LEAVE.

Microsoft argues the unlimited joint employment standard adopted in *Browning-Ferris* would discourage the technology company from directing contractors to provide 15 days of paid leave to their employees.

You are a small business owner looking to expand your brand by using the franchise business model.

Expanded joint employment negatively impacts job creation and business growth. Kristie Arslan, Owner and Popcorn Promoter of Popped! Republic in Alexandria, Virginia, will "not franchise [her] company due to unlimited joint employer liability."

You are a non-profit.

Donors and impact investors will be challenged in supporting NGOs that pursue important social franchising initiatives, such as clean water projects and safe birthing centers, under expanded joint employer liability.

You offer free English classes, high school completion, or tuition assistance to your franchisees' employees.

Corporate Social Responsibilities programs, like McDonald's Archways to Opportunities program and other educational benefit programs, may well be restricted under unlimited joint employer standards.

You provide in-kind resources to help small businesses recruit potential employees.

A Chicago-based franchisor, BrightStar Care®, which provides home health-care services, used to help its 300 franchisees recruit potential employees by providing a system-wide applicant tracking software to post job openings and screen applicants. BrightStar Care® was forced to suspend this valuable offering to franchisees without having sufficient clarity on expanded joint employer liability. Franchisees now host the software on their own at a cost of up to \$10,000/year per franchise business.