

U.S. Lawmakers Introduce Legislation to Restore Definition of 'Joint Employer' under National Labor Relations Act

By Garen E. Dodge and Philip B. Rosen

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Senator Lamar Alexander (R., Tenn.) chairman of the Senate Committee on Health, Education, Labor, and Pensions and Representative John Kline (R., Minn.), chairman of the House Committee on Education and the Workforce, introduced legislation to curtail the National Labor Relations Board's expansive new standard for determining "joint employer" status set forth *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015).

Before *Browning-Ferris*, a joint employer relationship existed only where "two separate entities share or codetermine those matters governing the essential terms and conditions of employment." The essential element in this analysis is "whether a putative joint employer's control over employment matters is direct and immediate." *Airborne Express*, 338 NLRB 597, 597, n.1 (2002). *Browning-Ferris* broadened the standard to include employers who may only affect employees' terms and conditions of employment indirectly. (For additional information regarding *Browning-Ferris*, please see our article, [Labor Board Sets New Standard for Determining Joint Employer Status](#).)

The proposed legislation, "Protecting Local Business Opportunity Act," S. 2015, H.R. 3459, 114th Cong. (Sept. 9, 2015), would amend the National Labor Relations Act's definition of employer to restore it to pre-*Browning-Ferris* status. The amendment states: "Notwithstanding any other provision of this Act, two or more employers may be considered joint employers for purposes of this Act only if each shares and exercises control over essential terms and conditions of employment and such control over these matters is actual, direct, and immediate." The bills' sponsors stated that the legislation is intended to protect small businesses and entrepreneurs and to restore policies in place long before the Board's decision, "the very same policies that served workers, employers, and consumers well for decades." Lamar Alexander, Press Release (2015), [Legislation Will Roll Back Labor Decision that "Threatens to Steal the American Dream from Owners of the Nation's 780,000 Franchise Businesses and Millions of Contractors"](#).

The bills were referred to the Senate Committee on Health, Education, Labor, and Pensions and House Committee on Education and the Workforce, respectively, for consideration.

Please contact the Jackson Lewis labor lawyer with whom you regularly work if you would like to discuss the implications of *Browning-Ferris* and the proposed legislation in more detail.

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