

New Georgia Law Says Franchisors Generally Not Employers of Franchisees' Workers

By Jonathan J. Spitz

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The "Protecting Georgia Small Businesses Act" amends Georgia's Labor and Industrial Relations Code to provide that neither a franchisee nor a franchisee's employee is considered an employee of a franchisor for "any purpose." However, the amendment does not apply to the Georgia Workers' Compensation Code. The Act goes into effect on January 1, 2017.

The Georgia Legislature reportedly passed the Act in response to the National Labor Relations Board's ruling in *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015). In that case, the NLRB broadened its definition of a "joint-employer" to include any entity that: (1) could exercise control over another entity's employees' terms and conditions of employment, whether it actually does so or not, or (2) exercises any such control through a third party.

In the wake of *Browning-Ferris*, several states have introduced legislation aimed at protecting businesses from the wide-ranging effects of the NLRB's aggressive decision. For example, seven states (Texas, Louisiana, Tennessee, Wisconsin, Michigan, Indiana, and Utah) have passed legislation that, like the Georgia law, prohibit a franchisor from being considered an employer or co-employer of franchisee employees. (S.B. 652, 84th Leg., Reg. Sess. (Tex. 2015); La. Rev. Stat. 23:921(F)(2) (2015); Tenn. Code Ann. § 50-1-208(a) (2015); Wisconsin S.B. 422, 2015-2016 Session; (Michigan) MCL 421.1, *et seq.*; Section 41(11); 8 MCL 408.411, *et seq.*, Section 2(d); 9 MCL 408.1001, *et seq.*, Section 5(2); 10 MCL 408.471 *et seq.*, Section 1(d); 11 MCL 418.101 *et seq.*; Indiana House Bill 1218 (2016); Utah H.B. 116, 2016 General Session.)

Similar legislative efforts have been introduced in California, Colorado, Massachusetts, Oklahoma, Pennsylvania, Vermont, and Virginia. (California (AB 545), Colorado (HB 16-1154), Massachusetts (HB 3513), Oklahoma (HB 3164), Pennsylvania (HB 1620), Vermont (HB 694), and Virginia (HB 18).) Legislators in Wyoming, North Carolina, Arizona, and Colorado are evaluating similar efforts.

Although the Protecting Georgia Businesses Act, and other state legislative actions, likely are preempted by the National Labor Relations Act, they represent yet another example of lawmakers' attempts to rein in what has been described as an "activist" NLRB.

Jackson Lewis attorneys are available to answer inquiries regarding this and other developments.

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