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POLICY BRIEF
**NLRB JOINT EMPLOYER
FINAL RULE**

BACKGROUND

NLRB’s final Joint Employer rule upends existing employment policy and expands liability risk for restaurant operators.

The National Restaurant Association strongly opposes the 2023 Joint Employer Rule and is committed to restoring a workable standard.

The Association supports legislative efforts to block this rule through the Congressional Review Act, as well as legislation to codify the 2020 standard, the *Save Local Business Act*, S.1261/H.R. 2826.

The Restaurant Law Center is also challenging the NLRB’s 2023 Joint Employer Rule, along with a coalition of business groups, in court.

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JOINT EMPLOYER FINAL RULE INCREASES RISKS FOR RESTAURANT OPERATORS

On October 26, 2023, the National Labor Relations Board (NLRB) issued a final rule redefining what constitutes joint employer status under the National Labor Relations Act (NLRA).

The final rule, which will go into effect March 11, 2024, adopts **broader circumstances in which an entity can be considered a joint employer and therefore be subject to certain obligations under the NLRA.**

NEW FINAL RULE EXPANDS SCOPE OF “JOINT EMPLOYMENT”

Under this new, expanded standard, a company can be deemed a joint employer of a second company’s employees if they **share or codetermine “those matters governing employees’ essential terms and conditions of employment,” including:**

- wages
- benefits & other compensation
- work and scheduling
- hiring and discharge
- discipline
- workplace health and safety
- supervision
- assignment
- work rules

This applies whether a company has direct or indirect control of those terms and conditions, and even if indirect control is never exercised.

IMPACT ON RESTAURANT OPERATORS

The 2023 Joint Employer Rule dramatically increases liability risks for operators in a franchisor-franchisee relationship, as well as for independent operators that contract with another company for on-site work, such as janitorial services.

For example, a restaurant could be:

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- required to bargain with a union representing jointly employed workers
- subjected to joint liability for unfair labor practices committed by a franchisee
- subjected to labor picketing that would otherwise be unlawful

Additionally, if a business is deemed a joint employer, then they are obligated to participate in collective bargaining with the other employer's unionized employees.

HISTORY OF NLRB'S SHIFTING STANDARDS

Determining employer status is among the most debated issues for NLRB. In fact, the 2023 Joint Employer Rule is the third standard NLRB has adopted in less than 10 years.

In 2015, the NLRB issued a decision in *Browning-Ferris* that upended 30 years of precedent by dramatically expanding the definition of joint employer. Under the *Browning-Ferris* test, two entities could be considered joint employers merely based on the presence of reserved joint control, indirect control or control that is limited and routine. This differed from the earlier standard, which mandated the potential joint employer to exert actual control over essential employment terms, with such control being "direct and immediate."

In 2020, the NLRB adopted a version of the Joint Employer Rule that established joint employer status when a company exercised "substantial, direct, and immediate" control over the essential terms and conditions of another company's employees and, and it provided clear, workable guidance for foodservice employers and employees.

The 2020 rule led to stability and predictability for foodservice employers and employees, and it allowed franchisees and franchisors to maintain an arms-length business relationship where their status and obligations to their respective employees were clear. This is why the Association and the Restaurant Law Center vigorously opposed NLRB's decision to replace the 2020 standard.

The 2023 Joint Employer Final Rule effectively reinstates the *Browning-Ferris* test, making it easier for an entity to be deemed a joint employer.

POLICYMAKERS CAN SET AN ENDURING JOINT EMPLOYER STANDARD

Restaurant operators and businesses nationwide need a stable and predictable joint employer standard.

The Association supports S.J. Res 49 in the Senate, a companion resolution to the House-passed H.J. Res 98, to overturn the 2023 Joint Employer Final Rule through the Congressional Review Act (CRA).

The Association also supports the [Save Local Business Act](#), S.1261/H.R. 2826, which would adopt the commonsense 2020 joint employer standard as law because restaurant operators and employees need a joint employer standard that is clear and workable, not more regulatory whiplash.