



H.R. 3441: The “*Save Local Business Act of 2017*”

The so-called *Save Local Business Act of 2017* (H.R. 3441) creates a new definition of “joint employer” that strips workers of their legal recourse for wage theft or unfair labor practices when multiple employers jointly control labor conditions. When more than one employer has the right to control the terms and conditions of employment, they may both be liable as “joint employers”. This commonly arises for permatemps or subcontracted employees who perform work on behalf of a client company that directs the employees’ work, but do not write the paychecks. H.R. 3441 replaces almost a century of law with chaos, creating uncertainty for workers and enabling unscrupulous employers to evade obligations under the *National Labor Relations Act* (NLRA) and the *Fair Labor Standards Act* (FLSA).

In the 114th Congress, Republicans introduced a similar bill to amend the NLRA, but H.R. 3441 is more radical in that it also amends the FLSA. That bill was voted out of the Committee on a party-line vote of 21-15.

H.R. 3441 cripples the right to collectively bargain when workers have joint employers.

- When workers join a union and exercise their right to collectively bargain over wages and conditions of employment, it is crucial that they be able to negotiate with all parties that control the employment relationship. If not, then collective bargaining would be futile.
- The National Labor Relations Board’s (NLRB) 2015 *Browning Ferris* decision restored longstanding precedent about who is considered a joint employer, preventing employers from insulating themselves from their responsibilities to collectively bargain if they share control over the terms and conditions of employment. H.R. 3441 seeks to undo this decision.
- By undermining workers’ rights to bargain with their employers, H.R. 3441 prevents workers from raising wages at a time of skyrocketing income inequality.

H.R. 3441 opens a loophole for employers to evade liability for wage theft, overtime and child labor violations.

- When Congress passed the FLSA to establish the minimum wage, institute the 40-hour work week, and eliminate child labor, it sought to ensure that client employers who control the economic realities of their subcontracted employees will be legally responsible for their subcontractors’ compliance.
- This bill enables joint employers to escape liability by narrowing the definition of who is a joint employer to only those who exercise direct control over all aspects of the employment relationship, even if the client employer establishes the economic realities of the employment relationship.

H.R. 3441 gives powerful franchisors a blank check to dictate small franchisees’ employment practices, while at the same time leaving franchisees on the hook for any legal violations.

- H.R. 3441 insulates franchisors from any liability arising from employment relationships, even if they contractually control franchisees’ employment practices.
- If the franchisor mandates a policy that could violate the NLRA or the FLSA then the franchisee may be forced to choose between abiding by their franchisor’s direction or compliance with the law.
- The NLRB carefully distinguishes between a franchisor’s control over brand management and its control over terms and conditions of employment. As such, the NLRB has never found a franchisor jointly liable with its franchisees in providing training, payroll services, or franchisee support.