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Congress Considers Amending NLRA to Require Direct Control for Joint Employer Findings

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On September 29, the House subcommittee on Health, Employment, Labor and Pensions held a legislative hearing to consider the **Protecting Local Business Opportunity Act, H.R. 3459**. This bill, which is mirrored in the Senate, **S. 2015**, would require that "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 House bill, introduced in early September by Education and the Workforce Committee Chairman John Kline, and its Senate counterpart, introduced by Health, Education, Labor and Pensions Committee Chairman Lamar Alexander, respond to the **NLRB's recent 3-2 *Browning-Ferris* decision** that a contracting entity may be subject to obligations under the National Labor Relations Act as a joint employer of workers even if it never exercised any control over such workers, but merely reserved the right to do so.

Browning-Ferris has created much uncertainty among, for example, franchisees and subcontractors. Proponents of this amendment hope that Congress can resolve the matter and provide some much needed clarity for business owners, while others contend that this is an issue best left to the NLRB and the courts.

The Senate will hold its own hearing on October 6. We will continue to monitor this issue as it develops.

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