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Franchisees:

What Does the NLRB Mean to You?

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Key Take- Aways

- An understanding of the current legal situation and your role in it.
- Effective ways for you to assure your compliance while adhering to brand standards
- A re-examination of the franchisee/franchisor value equation and how it works for you.

Sharing the Brand

Feels like one big brand but is many separate independent legal entities



- The franchisor and franchisee merely share a brand.
- Vicarious liability claims



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Joint Employment

Holding party “A” responsible for the employment and labor-relations activities of party “B”

In franchise context, allegations that a **Franchisor** is responsible for its Franchisee’s HR or labor policies due to **control over Franchisee’s day-to-day activities.**

Browning-Ferris Industries

- Old Standard: ***Direct*** and ***Immediate*** control over the employee
- New Standard: ***Indirect*** or ***Potential*** control over day to day employment matters and working conditions
- New standard meant to advance collective bargaining

NLRB Control Factors

- Wages, personnel issues, number of employees
- Work hours, schedules, shift hours, breaks, PTO policies
- Discipline, discharge, hiring
- Employee grievances
- Authorizing overtime
- Safety rules and standards
- Production standards
- Training employees

Current Environment

- NLRB vs. McDonald's
- NLRB Advice Memo in re "Freshii"
- Ochoa v. McDonald's Corp.

Practical Prevention

The consumer should know they're dealing with an Independent Franchisee operating under a license from a Franchisor

- **Post a sign in the business notifying the public that the business is independently owned under license from the Franchisor.**
- **Include the Franchisee's name in the public notification.**

Practical Prevention

- Franchisee should never use the Franchisor's marks as its identification on:
 - **Corporate name**
 - **Business stationery and cards**
 - **Invoices and agreements**
 - **Credit card receipts**
 - **HR materials: employment applications, handbooks, paystubs, etc.**
 - **Acknowledgment forms (that franchisee is the employer and franchisor is not the employer)**
 - **Employment ads***

Practical Prevention

- Manual
 - **Brand standards**; not personnel policies and procedures
 - No **control** over day to day business operations
- Training
 - Franchisor trains on brand standards; Franchisee trains it staff
 - Field staff – **assess and assist**, do not manage

**Franchisor:
Control the outcome, not the process**

Jan Pro/Maid Right Story

- Commercial cleaning industry - target for Joint Employment litigation for many years
- **Jan-Pro** using this model for 27 + years – successfully
- Started new brand – **Maid Right** in 2013 with same model



Franchisor Compliance

- Changes
 - Training vs Certification
 - Manuals vs Brand Standards
 - Step by Step directions vs Best Practices
 - Training in the field
 - Franchisee Training Centers
 - Insights in franchisees' staff



Results

Jan Pro

- Ranked #1 commercial cleaning franchise for 8 straight years! *
- #1 Fastest Growing Franchise Overall *
- One of the strongest Item 19's in the industry

Maid Right

- Ranked one of the fastest growing franchises in 2015*
- Strong franchisee networking and sharing culture



* Entrepreneur Franchise 500

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Franchisee

Franchisor Changes

- Changed support offerings
 - Insurance
- Communicated
 - "Keeping you up at night"
- Defined brand standards
- Taught the business relationship
- Stayed close and still compliant



The Franchisees Took On

- More training
- Employee management
- Business responsibility



Effects

- Changed relationship with the franchisor
 - New value equation for royalty
- Franchisor created more tools
 - Tools support the brand not the employees
- Wage/hour issues can be fewer and less expensive



Results

- Peer groups
- Become leaders
- More self reliant



Get involved and get informed ADVOCATE

Franchise **Action**
Network

A Strategic Initiative of the International Franchise Association



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SIGN UP

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Tools

@ Our Franchise

- Use in employee orientation
- Define the working relationship
- Understand the issues
- Advocacy tool

Third-party Vendors

- Payroll companies
 - Employee handbooks
- Hiring and Management Companies
 - Hireology
- Third-party Training
 - OSHA
 - ServSafe
 - EDU Certified

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