

Dear Ms. Rothschild:

I own a retail flooring company. I sell both directly to the consumer and building contractors. I am writing to express my support of the National Labor Relations Boards (Board) proposed rule on joint employment. The rule as written would be an important step to address the concerns of business owners by providing the clear lines in the determination of joint employer status.

For decades, the joint employer standard had protected small businesses like mine from liability involving employees over whom they did not exercise actual control. In 2015, the NLRB abandoned this precedent. Instead, the NLRB in its *Browning-Ferris* decision significantly expanded the definition of joint employer. Specifically, the NLRB ruled that it could impose joint employer liability when an entity has direct or “indirect” control whether or not it exercised that control over another entity’s employees.

Businesses always have the *potential* to indirectly control the employees of a subcontractor or franchisee, even if only because the company or franchisor can always cancel the contract if it is not satisfied with the performance of other company’s employees. Accordingly, the *Browning-Ferris* decision exposes small businesses to workplace liability for another employer’s actions and for workers they do not employ. Concomitantly, businesses are face more operational and legal costs, and companies are forced to limit with whom they contract to avoid being a joint employer to employees of multiple subcontractors. This decreases opportunities for new and small businesses and limits competition and innovation.

Therefore, I join with many other small business owners and urge the Board to finalize its proposed rule on the joint employment standard to help restore common sense to the employer-employee relationship and stability to those who create most of our nation's jobs. I also recommend that the Board add in an example or explanation regarding businesses like mine that are engaged in construction. In construction the customer will expect the general contractor to oversee the work and ensure the quality and completion. As a result, general construction contractors will generally have a construction manager on site. These construction managers will often instruct the subcontractor’s on-site manger or head installer. The same is true for the flooring industry—the customer looks to the retailer who sold the flooring to oversee and ensure quality installation. The Proposed Rule should make clear that these common practices do not result in finding the general contractor or retailer is a joint employer.

We appreciate this opportunity to comment on the Proposed Rule.

Respectfully Submitted,