



GUIDE FOR FRANCHISORS:

WHAT YOU NEED TO KNOW ABOUT
JOINT EMPLOYER & CAREERPLUG



On October 27, 2023, the NLRB (National Labor Relations Board) released a new rule about how to decide if two or more companies are joint employers of a group of workers. According to this rule, if each company has a working relationship with the employees and they together decide essential terms and conditions, they can be considered joint employers under the National Labor Relations Act.

Joint employment is an evergreen topic in the franchise industry, but this new rule is sparking renewed interest and concern. For franchise brands, the most common concern is that employees of a franchisee could also be deemed employees of the franchisor, and therefore make the brand liable for employment issues. The new standards may open up franchisors to litigation, and have caused operations and legal teams to question how they can continue to support franchisees.

In this guide, we'll help you understand what this means for you as a franchisor, how to continue supporting your franchisees with their recruitment needs, and why it can be helpful to use a 3rd party vendor like CareerPlug.



WHAT'S CHANGED WITH THIS NEW RULE?

By 2020 standards, franchisors could be deemed joint employers if they "possess and exercise ... substantial direct and immediate control" of employee's terms and conditions of employment. The new 2023 final ruling includes control over essential terms "**whether or not such control is exercised**, and without regard to whether any such exercise of control is direct or indirect."

Simply put: previously, you could only be considered a joint employer if you directly controlled your franchisee's employees – now, you may be at risk for joint employment for simply having the authority to control "essential terms of employment."

Plus, the rule has broadened the definition of those terms.

DEFINITION OF ESSENTIAL TERMS OF EMPLOYMENT

PREVIOUS RULING:	NEW RULING:
<ul style="list-style-type: none">• Wage• Benefits• Hours of work• Hiring, discharge, supervision and direction	<ul style="list-style-type: none">• Wage• Benefits• Hours of work• Hiring, discharge, supervision and direction• Other compensation• Scheduling• Assignment of duties• The tenure of employment• Work rules and directions, governing the methods of performance of duties• Working conditions related to safety and health of employees

SHOULD YOU BE CONCERNED?

Franchisee success relies on utilizing the support system that a franchise network offers. From new franchisee onboarding, opening support, training, ongoing coaching, peer groups – the list goes on for how franchisor AND franchisee resources are utilized in driving success of the network. This new ruling does not mean that you should scrap all of the successful support programs and halt communications with your franchisees. BUT, there are some extra steps you may want to take to protect your franchisees like:



- Reviewing your franchise agreement with your attorney or legal team to make sure you are limiting certain language on what the franchisor expressly controls.
- Making sure that any materials and guidelines that are provided to franchisees related to employment are firmly stated as best-practice templates and that they should be revised for local needs.
- Using 3rd party vendors that are well versed in franchising with programs designed to protect your brand and your franchisees.

Lastly, education is key. Continue to educate yourself and franchisees, utilize industry resources like the IFA, and seek out content from franchise focused legal teams. This topic will continue to evolve and the franchise community is invested in helping everyone understand best practices.

JOINT EMPLOYER AND CAREERPLUG

One of the biggest challenges for franchisees is the same as it's always been: hiring and retaining the right people.



CareerPlug is the **number one hiring software in the franchise industry**, and our system and partnerships are set up in a way that limits risks for franchisors, while providing an excellent support system for their franchisees.

CareerPlug has worked with over 350 franchise brands, and has experience with franchise systems of all sizes and risk tolerances for joint employer concerns. For networks on the more conservative side, having a 3rd party partnership in place is a big benefit, as it provides a team of experts that can share best practices, industry data, and help franchisees with actionable information to see success at their local level with recruiting.

CareerPlug's software leaves full control in your local franchisee's hands. Our software provides best practice templates that franchisee's can utilize, or they can completely configure their account to match their local needs. Throughout the application process we add in disclaimers letting candidates know that locations are independently owned and operated, and we do not share candidate information with corporate teams. These are only a few of the safeguards that we have built into our system to help protect your brand, while providing an easy-to-use experience for your franchisees.

Overall, offering the optional benefit of an applicant tracking system makes hiring easier for franchisees while preserving independent ownership, management, and configuration.

CONTACT US

To learn more about how CareerPlug works with franchises, contact our resident Certified Franchise Executive, Wayne Engeron.



Wayne Engeron

CERTIFIED FRANCHISE EXECUTIVE

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This new rule is effective as of December 26, 2023, and will only be applied to cases filed after the effective date. IFA along with other franchise groups are actively trying to appeal the rule.

The information in this guide is intended to provide useful information on the topic covered, but none of the information should be construed as legal advice or a legal opinion. Due to the evolving nature of this topic and potential differences in regional regulations, it is crucial for franchisors and franchisees to seek legal advice specific to their jurisdiction to fully understand their rights, obligations, and any potential joint employer considerations.