Policy Matters Ohio

TESTIMONY
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Work & Wages

Testimony on HB 494 before the Senate Transportation, Commerce, and Workforce Development Committee

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Chair LaRose, Vice Chair Kunze, Ranking Member Schiavoni, and members of the committee. My name is Hannah Halbert and I am a project director at Policy Matters Ohio, a nonprofit, nonpartisan organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for the opportunity to testify in opposition to HB 494.

This legislation is an attempt to shield corporate franchise owners from bearing joint responsibility with their franchisees, even when owners discourage or prevent franchisees from complying with minimum wage, overtime, health and safety, and other laws designed to protect workers.

When two or more businesses co-determine or share control over a worker's pay, schedule, or job duties, then both of those businesses should be considered employers of that worker, or "joint employers." The joint-employer doctrine is a well-established legal principle. It determines when two separate businesses that share or combine control over workers should be held accountable as joint employers for complying with employment and labor laws. This legislation is in response to a National Labor Relations Board decision that entities could be joint employers on a single workforce if both are within the meaning of the common law definition of employers. Basically, businesses can be joint employers if they share or codetermine matters essential to the terms and conditions of employment, whether they have the actual or potential authority to exercise control over those terms and conditions. This legal test is more in line with the reality of work in today's fragmented economy where sub-contracting, outsourcing and franchising can often blur the lines between which entity is exercising control of which conditions. The older standard required direct and immediate control. It is a small distinction, but one that matters.

For example, in 2016, New York filed a suit against Domino's Pizza and a number of its franchisees for failing to properly pay $545,000 in wages due to workers. Domino's knowingly required its franchisees to use payroll software that systematically undercounted hours. Further investigation on the part of New York found that Domino's corporate office directed franchisees in hiring, firing, and disciplining workers. In this situation, seeking redress from the franchisees as sole employers of the workers would not have remedied the situation because the policies and software giving rise to the corporate-wide practices originated from the corporate entity. The facts of the case were clear: both the franchisor and the franchisees controlled the terms and conditions of employment.

HB 494 and similar franchisor shield laws cropping up around the country would prevent workers and their representatives from determining whether the corporate franchiser exercised control or was complicit in reducing worker protections. It will put workers and small-business franchisees at a real disadvantage. Joint-employer responsibility is an important legal tool necessary for protecting workers and small-business competitors from unscrupulous corporate practices in an economy where significant control of employment conditions can be exercised through indirect ways.

Under state and federal labor law, franchisees are already considered employers because they directly hire and control employees. The joint-employer standard is about whether franchisors may also face liability when they (like Dominos did in New York) help cause the workers to go underpaid or face discrimination at work. The joint-employer doctrine does not mean that every franchisee violation of wage and hour law is automatically attributable to the franchisor. It means that franchisors can be held responsible not only when the have direct control over a worker but also when they mandate, encourage, participate in, that create routine systems that are complicit in violations.

A closer look at joint-employer standards reveals that they actually help small businesses, and their employees, by aligning the economic interests of the franchisor with the franchisee--when the corporate owners know they can be held liable for violations, they are less likely to force franchisees to cut corners. This helps level the playing field between small-business franchisees and the corporate franchisor. HB 494 will stick franchisees with the liability tab, regardless of the role of the corporate franchisor or the degree to which the franchisor exercises control over the workers and working conditions in the franchisees' stores.

Ohio should not be insulating these powerful and often out of state interests against the risks of doing business, certainly not at the expense of working Ohio's access to justice.

Thank you for this opportunity to testify.