



Work & Wages

Testimony on HB 494 before the House GAO Committee Hannah Halbert

Chairman Blessing, Ranking Member Clyde and members of the committee. My name is Hannah Halbert and I am a researcher 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 those corporate owners discourage or prevent those franchisees from complying with minimum wage, overtime, health and safety, and other laws designed to protect workers. If this bill were enacted, workers and the state could no longer hold franchisors jointly responsible for these violations, regardless of the level of control the corporate owners exerted over the franchisees' practices.

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 legal principle that is used to determine 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.

Joint-employer responsibility is an important legal tool necessary for protecting workers and small-business competitors from unscrupulous corporate practices. 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 had required its franchisees to use payroll software that systematically undercounted hours, even though the corporation knew about the undercounting. 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 solely 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 were jointly controlling the terms and conditions of employment.

HB 494 and similar franchisor shield laws cropping up around the country would no longer allow workers and their representatives to look at the facts of the case to determine 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.

The argument that policymakers can improve the standing of small business franchise owners by enacting joint-employer shield laws is misleading. These laws have no impact on franchisee liability. Franchisees are already considered employers under state and federal labor and employment laws 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 when they encourage, participate in, and 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 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.