



Statement for the Record

Submitted by the American Hotel & Lodging Association

Before the

House Committee on Small Business

Subcommittee on Investigations, Oversight and Regulations

“Risky Business: Effects of New Joint Employer Standards for Small
Firms.”

March 17, 2016

On behalf of the American Hotel & Lodging Association (AH&LA), the sole national association representing all sectors and stakeholders in the U.S. lodging industry, including owners, REITs, chains, franchisees, management companies, independent properties, suppliers, and state associations, we thank Chairman Hardy and Ranking Member Adams for the opportunity to submit a statement for the record for the House Small Business Committee Subcommittee on Investigations, Oversight and Regulations hearing, "Risky Business: Effects of New Joint Employer Standards for Small Firms." We appreciate the Committee's attention to this critical issue facing the hospitality industry.

The lodging industry is one of the nation's largest employers. With nearly 2 million employees in cities and towns across the country, the hotel industry generates \$176 billion in annual sales from 4.9 million guestrooms at 53,432 properties. It's particularly important to note that the lodging industry is comprised largely of small businesses, with more than 55% of hotels made up of 75 rooms or less.

Our industry's strong growth, sales, and employment base are key reasons that lodging has led the nation's economic recovery with month after month of growth, leading to six straight years of job creation. The lodging industry is a valuable contributor to the local and national economy, creating well-paying jobs and career opportunities for millions of people. Hoteliers strive each day to make sure those opportunities continue to grow. We are concerned, however, that recent decisions from the National Labor Relations Board (NLRB) could jeopardize our employers and employees alike.

For more than three decades, the joint employer standard has been one of the cornerstones of labor law, protecting businesses from undue liability involving employees over which they do not have actual or direct control. Unfortunately, through its *Browning-Ferris Industries (BFI)* decision, the NLRB has completely re-written the joint employer standard by including "indirect" and "potential" control into its decision. In doing so, the NLRB has ignored years of legal precedence and has created an environment of uncertainty that will put pressure on primary companies to assert more authority over small businesses to limit new potential liabilities under federal labor law. Small businesses are now fearful of undue liability involving the actions and activities of employees of subcontractors, suppliers and vendors, over which they do not have actual or direct control.

AH&LA commends hotelier and small business owner Vinay Patel, President and CEO of Fairbrook Hotels of Herndon, Virginia and board member of the Asian American Hotel Owners Association (AAHOA), for taking the time away from his businesses to testify before the Committee on this issue, which could have a profound impact on his business and thousands of other franchised hoteliers. Mr. Patel is the embodiment of the American Dream, taking an enormous financial risk by opening his first hotel as an independent, without the benefit of assistance from any hotel brand, and building a successful small business that includes eleven properties and more than 150 employees.

As Mr. Patel succinctly points out in his testimony, changes to the joint employer standard by the NLRB is completely contrary to his experience of successfully building a small business. The NLRB and its short-sighted decision to alter the joint employer standard fails to recognize that he, like many other independent hotel owner-operators, is responsible for the hiring and firing, setting the schedule and conducting employee reviews all the while trying to turn a profit and hopefully create more jobs. Mr. Patel has a contractual licensing agreement with the several franchisors, but as he states in his testimony, he fears that changes to the joint employer standard will, "...foreclose entrepreneurship opportunities for small business and transform franchisees into managers and employees from independent owners and operators."

Moreover, changes the joint-employer standard could drastically alter thousands of contractual agreements already in affect between franchisors and franchisees. If a franchisor were to be held liable for the actions and activities taken by one of their franchisees or one of their franchisees' employees or subcontractors, then the business relationship and the contracts that govern that relationship would have to be wholly reconstituted. In its most basic terms, the franchisor licenses and protects its brand while the franchisee owns and operates a location of that brand as a licensee. Broadening employer liability to those employees that they do not have direct control over will lead to larger businesses being less inclined to subcontract out portions of its business to smaller businesses and subcontractors.

As illustrated by testimony of both Mr. Patel and the other small business employers testifying today, the NLRB's changes to the joint employer standard would serve only to disincentivize small business entrepreneurs from starting businesses and creating jobs. Small employers have relayed their concerns and uncertainty surrounding the impacts of the *BFI* decision. As our economy slowly rebounds from the recession, Congress and the federal government should be promoting policies that foster and incentivize job growth, free enterprise, and a stable regulatory environment. Regrettably, the NLRB's decision in *BFI* has done the opposite, creating unnecessary anxiety and uncertainty within the small employer community. AH&LA strongly urges Congress to revert back to the previous joint employer standard which provided certainty and clarity for hundreds of thousands of small businesses for more than three decades as it relates to their workforce and their business to business contractual agreements.

Thank you for your attention to this issue and we appreciate the opportunity to offer our industry's perspective. We hope the Committee will take our testimony into account as it continues its review of this important economic issue.