



June 22, 2026

Submitted via regulations.gov

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
United States Department of Labor
Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

Re: Americans for Fair Treatment's Comment in Response to the Department of Labor's Notice of Proposed Rulemaking Regarding Joint Employer Status
RIN 1235-AA48 | Docket No. WHD-2026-0067

Dear Administrator Rogers:

Americans for Fair Treatment (“AFFT”) respectfully submits this comment in response to the United States Department of Labor (“Department” or “DOL”) Wage and Hour Division’s (“WHD”) Notice of Proposed Rulemaking, Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, 91 Fed. Reg. 21878 (Apr. 23, 2026) (the “Proposed Rule”). AFFT appreciates the Department’s effort to restore regulatory guidance and to provide American Workers, employers, courts, and enforcement personnel with a clearer nationwide framework for determining joint-employer status under the Fair Labor Standards Act (“FLSA”), Family and Medical Leave Act (“FMLA”), and Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”).

I. AFFT’s Interest in the Proposed Rule

AFFT is a national nonprofit organization that empowers public employees to understand and exercise their constitutional rights in the workplace, particularly in unionized environments. Through a free membership program, AFFT provides education on workers’ rights—including to opt out of union membership, avoid compulsory dues, and ensure that contributions are not used for partisan politics. AFFT protects employees from retaliation or discrimination when they exercise those rights. AFFT currently serves nearly 20,000 public sector employees nationwide.¹

AFFT’s perspective in this rulemaking is American- Worker-centered. AFFT works with employees who often face confusing institutional structures, incomplete information, and pressure from organizations that claim authority over their workplace choices. AFFT’s experience teaches that American Workers are best protected when legal rights and responsibilities are clear, when those American Workers know who

¹ AMERICANS FOR FAIR TREATMENT, *About*, <https://americansforfairtreatment.org/about/>; Americans for Fair Treatment, *Free Membership*, <https://americansforfairtreatment.org/join-afft>.

controls the terms and conditions of their work, and when American Workers can make informed decisions without coercion, retaliation, or unnecessary uncertainty. AFFT's website and membership resources reflect that mission by providing workers with accurate information, confidential support, and individualized guidance as they evaluate their workplace rights and options.²

For that reason, AFFT has a strong interest in the Department's joint-employer rulemaking. Joint-employer doctrine is not merely a technical question for lawyers. It determines when more than one entity is legally responsible for a worker's wages, hours, leave rights, and working conditions. When the standard is unclear, workers may not know which entity is responsible for compliance; smaller employers may not know when they can accept compliance assistance or operational support; and enforcement resources may be diverted into disputes about business relationships rather than the facts that bear on employment responsibility.

AFFT supports a rule that identifies true joint-employment relationships and ensures that entities exercising meaningful employment control cannot evade responsibility. At the same time, an overbroad or vague joint-employer standard can harm workers by discouraging beneficial business relationships, compliance assistance, safety guidance, training resources, and other forms of support that improve workplace conditions for the benefit of the American Worker. The final rule should therefore focus on whether the putative joint employer meaningfully controls essential terms and conditions of employment, not on routine commercial relationships, brand standards, franchise support, legal-compliance requirements, quality-control provisions, or other standard business practices that do not determine who hires, pays, schedules, disciplines, or supervises the worker.

II. Summary of AFFT's Position on the Proposed Rule

AFFT supports the Department's effort to restore clear regulatory guidance. Since rescinding the 2020 Rule in 2021, the Department has not maintained Part 791 guidance addressing FLSA joint-employer status. The Proposed Rule correctly recognizes that the absence of regulatory guidance has created uncertainty for workers, employers, courts, and enforcement personnel, especially in vertical joint-employment scenarios. 91 Fed. Reg. at 21878, 21884-85. AFFT agrees that notice-and-comment rulemaking is an appropriate way to provide a transparent nationwide standard and to allow workers, employers, and other interested organizations to participate in shaping that guidance.

AFFT also supports the Department's effort to promote uniformity across the FLSA, FMLA, and MSPA where the statutes permit a common approach. Uniformity benefits workers because it allows employees, employers, and enforcement personnel to evaluate legal responsibility under a single, comprehensible framework rather than under a patchwork of overlapping tests. At the same time, because the proposed Part 791 analysis would have consequences across wage-and-hour, leave, and agricultural-worker protections, the final rule must be especially clear, administrable, and faithful to workplace realities.

AFFT respectfully urges the Department to make several clarifications in the final rule and its accompanying preamble. First, the Department should make very clear the principle that actual, meaningful control over essential employment terms is the *sine qua non* of vertical joint-employer analysis. Second, the Department should retain its careful treatment of reserved control: reserved authority may be considered, but actual exercise of control is substantially more relevant, and unexercised contractual rights

² AMERICANS FOR FAIR TREATMENT, *Opt Out*, <https://americansforfairtreatment.org/opt-out>.

associated with ordinary business practices should not be treated as employment control. Third, the Department should substantially build out the franchisor/franchisee discussion in proposed § 791.125 because franchising is a major source of jobs, training, advancement, local entrepreneurship, and worker opportunity. Fourth, the Department should preserve the rule's limits on employment records, administrative functions, recommendations, and incidental impacts. Fifth, the Department should ensure that additional factors do not become a vague catch-all that undermines the final rule's clarity.

With those clarifications, AFFT believes the final rule can protect workers more effectively. It can identify the entities that truly share or codetermine employment terms, help workers understand who is responsible for their rights, encourage businesses to provide compliance and safety resources, and reduce litigation over ordinary commercial relationships that do not make one business the employer of another business's employees.

III. Clarity and Uniformity Protect American Workers

The Department is right to emphasize the need for clarity. Joint-employer uncertainty harms American Workers in at least three ways. First, uncertainty makes it harder for workers to know who is responsible for compliance. A worker who has a concern about pay, scheduling, leave, or safety should be able to readily identify the employer or employers that control the relevant decision. If the legal standard is vague, workers may be told by one entity to ask another, while the entities themselves dispute who is responsible. A clear rule helps workers direct complaints, requests, and questions to the entity that actually controls the relevant employment term.

Second, uncertainty can weaken compliance incentives. Many smaller employers benefit from model policies, training resources, compliance checklists, technology platforms, and safety guidance provided by larger business partners, franchisors, vendors, trade associations, or customers. Those resources can help local employers understand and comply with wage-and-hour, leave, anti-discrimination, safety, and other workplace obligations. If the joint-employer standard treats ordinary compliance assistance as evidence of employment control, larger entities will reduce or eliminate those resources. That result would harm workers by removing tools that promote lawful and safe workplaces.

Third, uncertainty can distort enforcement. AFFT agrees that the Department must be able to pursue true joint employers who violate the law, including in serious cases involving child labor, wage theft, retaliation, or other workplace abuses. But a standard that sweeps in entities based on brand protection, contractual monitoring, or routine business coordination can blur the distinction between the entity that controls employment decisions and entities that merely do business with the employer. That blurring can make investigations more complex without necessarily improving outcomes for workers. A clearer standard allows enforcement to focus on the facts most likely to matter: who hired the worker, who sets the worker's schedule, who controls supervision and working conditions to a substantial degree, who determines pay, and who maintains employment records in a way that reflected employment control.

Uniformity across the FLSA, FMLA, and MSPA can further benefit workers. The Department proposes to amend the FMLA and MSPA regulations so that joint-employer status under those statutes is determined using the FLSA analysis in Part 791. 91 Fed. Reg. at 21878, 21886, 21902. AFFT supports that approach in principle. Employees should not have to navigate different definitions of joint employment for wage rights, leave rights, and related worker protections where Congress used definitions that allow a

common analysis. A uniform standard also helps employers design compliance systems that protect workers across statutes.

But uniformity increases the importance of precision. If the final Part 791 standard is very clear, it can provide consistent protection across multiple statutes. If it is vague, uncertainty will extend across multiple statutory regimes. AFFT therefore urges the Department to make the final rule as concrete as possible, especially in vertical joint-employment contexts involving franchising, contracting, staffing, supply chains, and other common business relationships.

IV. Actual, Meaningful Control Over Essential Employment Terms Should Remain the Touchstone of Joint Employment Analysis

The final rule should make clear that the touchstone of vertical joint employment is meaningful control over essential terms and conditions of employment. The FLSA’s joint-employer concept is not triggered merely because one business benefits from another business’s work, contracts with another business, protects a brand, provides training resources, purchases or supplies products, requires legal compliance, or monitors contractual performance. It is triggered where the facts show that the putative joint employer functions as an employer of the worker.

The Department’s proposed four-factor vertical framework is a useful starting point when framed that way. Proposed § 791.115(a) asks whether the potential joint employer has the power to hire or fire the employee; supervises and controls the employee’s work schedule or conditions of employment to a substantial degree; determines the employee’s rate and method of payment; or maintains the employee’s employment records. 91 Fed. Reg. at 21918–19. These are appropriate factors because they ask whether the putative joint employer is involved in the kinds of decisions employers ordinarily make about their employees.

AFFT particularly supports the Department’s inclusion of the phrase “to a substantial degree” in the supervision-and-control factor. Modern workplaces often involve coordination among multiple entities. A customer may set delivery windows. A property owner may impose site safety rules. A franchisor may require brand standards. A vendor may provide training materials. A government contractor may require proof of legal compliance. Such facts probably have some incidental effect on the work performed by another entity’s employees, but they do not establish that the putative joint employer supervises and controls the employees’ schedules or conditions of employment to a substantial degree.

The final rule should also emphasize that no single factor is dispositive and that the totality of the circumstances remains important. That principle protects workers and employers alike. It ensures that an entity cannot avoid joint-employer responsibility where the overall facts show meaningful employment control. It also prevents isolated or low-probative facts—such as maintenance of records for billing purposes or a contractual right to require legal compliance—from creating joint-employer status where the workers’ actual employer retains control over hiring, scheduling, supervision, pay, discipline, and discharge.

This approach is consistent with the caselaw discussed in the NPRM. Those cases support a rule that looks to workplace realities and employment-type control, not a rule that converts ordinary commercial relationships into joint employment.

AFFT therefore recommends that the Department state in the final rule’s preamble that the four vertical factors are designed to identify meaningful control over essential employment terms. Limited involvement in another company’s operations, recommendations, quality control, brand protection, legal-compliance monitoring, or other ordinary commercial coordination should not be treated as employment control unless the putative joint employer meaningfully controls the employees’ hiring, firing, supervision, schedule, conditions of employment, rate or method of pay, or related employment records.

V. The Department Appropriately Recognizes Reserved Control Without Allowing Unexercised Contractual Rights to Swallow the Rule

AFFT supports the Department’s treatment of reserved control in proposed § 791.115(c). AFFT believes that actual exercise of meaningful control over essential terms and conditions of employment should remain the principal guidepost in the joint-employer analysis. At the same time, AFFT recognizes that the Department’s treatment of reserved control must account for the litigation concerning the 2020 Rule.

The Proposed Rule appropriately responds to that concern without adopting an overbroad or prescriptive reserved-control standard. Proposed § 791.115(c) provides that a potential joint employer’s “ability, power, or reserved right to act in relation to the employee” is relevant, but that actual exercise of control is “more relevant” than an unexercised ability, power, or right. The proposed rule also properly explains that a contractual right to supervise, discipline, or fire employees is less relevant where, in practice, the potential joint employer never exercises it. 91 Fed. Reg. at 21919–20.

AFFT supports this approach. It recognizes that reserved authority cannot be excluded from the analysis altogether, while preserving the central role of actual workplace realities. That balance matters to workers. Workers benefit when entities that actually control employment terms are held responsible. Workers are not helped by a standard that treats every unexercised contractual right, brand standard, or legal-compliance provision as though it were actual control over their employment.

This approach advances worker protection more effectively than either extreme. Excluding reserved control altogether could miss unusual cases where an entity has retained and uses reserved authority in a way that meaningfully affects workers. Treating unexercised reserved rights as highly probative, however, would allow joint-employer disputes to turn on contract drafting rather than workplace reality. The Department’s proposal strikes the right balance: reserved authority may be considered, but actual exercise of control is more relevant, and ordinary business-practice reservations should not move the analysis.

VI. The Department Should Build Out and Substantially Strengthen the Franchisor/Franchisee Discussion in the Final Rule

Proposed § 791.125 is perhaps the most important provision in the Proposed Rule. AFFT strongly supports the Department’s statement that merely operating as a franchisor, entering into a franchise agreement, entering into a brand-and-supply agreement, or using a similar business model does not, by itself, make joint-employer status more or less likely. 91 Fed. Reg. at 21922. AFFT urges the Department not only to retain that provision, but to substantially build it out in the final rule because franchising is a major source of jobs, training, advancement, and local economic opportunity for American Workers.

The franchise economy is large and worker-intensive. The International Franchise Association’s (“IFA”) *2026 Franchising Economic Outlook* reports that franchise establishments are expected to grow to approximately 845,000 units in 2026; franchise employment is anticipated to increase by more than 150,000 jobs to nearly 8.9 million jobs; and franchise output is expected to rise to \$921.4 billion.³ Those numbers matter for workers. Franchised businesses employ workers in restaurants, child services, home services, health and fitness, lodging, automotive services, retail, personal services, and many other sectors. They provide first jobs, flexible jobs, management pathways, training, and opportunities for workers to develop skills that can lead to advancement or entrepreneurship.

Franchising is also important because it links local business ownership with established brands and support systems. A local franchisee can operate an independently owned business while receiving the benefits of a recognized brand, training, operating systems, quality standards, advertising support, product development, and other resources. Workers often benefit from those support systems. Training modules can help new employees learn job skills. Safety standards can reduce hazards. Customer-service systems can provide structure and consistency. Model policies can help local employers understand wage-and-hour, leave, anti-harassment, and other legal obligations. Technology platforms can help track time, process payroll, or communicate schedules more accurately.

The Department should expressly recognize that those features are inherent in franchising and should never be confused with employment control. IFA explains that franchising is a method of expanding a business through a licensing relationship in which the franchisor provides brand and support, and that in business-format franchising the franchisee commonly receives training, operating manuals, brand standards, quality control, marketing strategy, and business support.⁴ IFA further explains that, although franchisors provide support and exercise some controls to ensure adherence to brand guidelines, the franchisee is responsible for the day-to-day management of its independently owned business.⁵ That distinction is central to the joint-employer analysis.

The Department should also account for the legal structure of franchising. Under the Federal Trade Commission’s Franchise Rule, a franchise generally involves the right to use the franchisor’s mark, significant control over or significant assistance in the franchisee’s method of operation, and a required payment.⁶ If DOL were to treat the ordinary controls and assistance that are the very definition of franchising as evidence of employment control, franchising as a category would become suspect under the FLSA. That would be the exact wrong result. The fact that a franchisor protects its mark, provides training, enforces system standards, or offers operational support tells us that the relationship is a franchise. It does not tell us that the franchisor hires the franchisee’s employees, sets their schedules, determines their pay, disciplines them, or supervises them to a substantial degree.

AFFT is particularly concerned that an overbroad joint-employer standard could discourage franchisors from offering precisely the forms of support that benefit workers. If a franchisor believes that

³ INTERNATIONAL FRANCHISE ASSOCIATION, *2026 Franchising Economic Outlook*, <https://www.franchise.org/franchising-economic-outlook>.

⁴ INTERNATIONAL FRANCHISE ASSOCIATION, *What is a Franchise?*, <https://www.franchise.org/franchising-overview/what-is-a-franchise>.

⁵ *Id.*

⁶ 16 C.F.R. § 436.1(h) (defining franchise to include, among other elements, use of the franchisor’s mark, the franchisor’s significant control over or significant assistance in the franchisee’s method of operation, and a required payment).

providing sample handbooks, wage-and-hour compliance checklists, model anti-harassment policies, training modules, safety resources, or scheduling software will be used as evidence of joint employment, the rational response is to provide less support. That would not empower American Workers. It would leave local franchisees with fewer tools to comply with the law and fewer resources to train and support their employees.

The same is true for inspections, audits, and enforcement of brand or legal-compliance standards. A franchisor may inspect a location to ensure food safety, cleanliness, customer-service quality, product consistency, equipment maintenance, signage, hours of operation, or adherence to brand standards. It may require the franchisee to cure deficiencies or may reserve the right to terminate the franchise agreement if the franchisee materially fails to comply. Those are contract and brand-protection mechanisms. They are not the same as disciplining a worker, changing a worker’s schedule, setting a worker’s pay, or directing the details of the worker’s employment relationship.

The final rule should make this distinction clear. Proposed § 791.125(b) and (c) already provide that requiring compliance with legal obligations, health and safety standards, quality-control standards, or brand-reputation standards—and monitoring or enforcing those requirements—does not make joint-employer status more or less likely. AFFT strongly supports those provisions. But given the significance of franchising, DOL should add additional franchise-specific discussion and examples to ensure that courts, investigators, workers, franchisors, and franchisees understand the rule in practice.

AFFT recommends that the final rule’s preamble include a dedicated franchising discussion explaining at least four points. First, a franchisor’s brand standards, operating manuals, required product or service specifications, customer-service standards, facility standards, technology requirements, marketing requirements, inspection rights, and contract-remedy rights ordinarily concern the franchise relationship, not the employment relationship. Second, a franchisor’s provision of training, model policies, optional human-resources materials, compliance resources, or safety materials should not be treated as evidence of joint employment unless the franchisor actually uses those materials to control employment terms. Third, a franchisor’s requirement that a franchisee comply with federal, state, or local law should certainly not increase joint-employer risk. Fourth, a franchisor does not become a joint employer merely because a franchisee voluntarily adopts the franchisor’s recommendations or optional resources.

AFFT recommends that the Department add a franchise-specific example to § 791.125(e). AFFT proposes the following example:

Example. A national franchisor licenses its brand and business system to a locally owned franchisee. The franchise agreement requires the franchisee to follow brand standards, use approved signage and uniforms, meet product-quality and customer-service standards, maintain certain hours of operation, complete brand training, use an approved point-of-sale or scheduling platform, and comply with all applicable labor, safety, food-safety, and anti-discrimination laws. The franchisor provides optional model policies, training modules, and compliance checklists, and it periodically inspects the franchise location for brand, safety, quality, and legal-compliance purposes. The franchisee decides whom to hire and fire, sets employees’ schedules, supervises employees’ day-to-day work, determines employees’ rates and methods of pay, and maintains

employment records. On these facts, the franchisor's brand standards, support systems, compliance resources, inspections, and reserved right to enforce the franchise agreement do not make joint-employer status more or less likely.

Including this example would not create a franchise exemption. If a franchisor actually hires or fires a franchisee's employees, controls their schedules or conditions of employment to a substantial degree, determines their pay, or otherwise uses the franchise relationship to exercise meaningful employment control, the rule would still allow joint-employer responsibility where appropriate. The example would simply clarify that franchising, brand protection, legal compliance, safety, quality control, and support are not themselves employment control.

This clarification would advance worker interests. It would preserve the Department's ability to pursue true joint employers for violations while reducing incentives for franchisors to withdraw compliance and safety resources. It would help local franchisees continue to receive support that can improve operations and workplace compliance. And it would help workers understand that the entity controlling their pay, schedules, supervision, and discipline is ordinarily the entity responsible for those decisions, absent facts showing meaningful control by another entity.

DOL should therefore strengthen proposed § 791.125 in the final rule. The final rule should say expressly that a franchisor does not become a joint employer merely by protecting its brand, enforcing system standards, providing training or operational support, offering optional model employment policies, requiring legal compliance, auditing franchise locations, using common technology platforms, or enforcing the franchise agreement. The analysis should remain focused on whether the franchisor meaningfully controls essential terms and conditions of the franchisee's employees' employment.

VII. The Department Should Preserve the Limited Weight of Employment Records and Administrative Functions

AFFT supports the Proposed Rule's limitations on the employment-records factor. Proposed § 791.115(b) defines employment records as records, such as payroll records, that reflect, relate to, or otherwise record information pertaining to hiring or firing, supervision and control of work schedules or conditions of employment, or determining the rate and method of payment. The proposal also states that records related to contractual agreements and business practices identified in § 791.125 do not make joint-employer status more or less likely and are not considered employment records. Finally, the proposal states that satisfaction of the maintenance-of-employment-records factor alone will not lead to a finding of joint employment. 91 Fed. Reg. at 21919.

The Department should retain those limitations. Recordkeeping, payroll support, timekeeping technology, compliance reporting, and other administrative functions are common in modern workplaces. They may be performed by vendors, franchisors, customers, associations, professional employer organizations, payroll companies, software providers, or related entities. Those services can improve accuracy and compliance, which benefits workers. But they do not necessarily show that the service provider or business partner controls hiring, firing, scheduling, supervision, discipline, or pay decisions.

Treating records as strong evidence of joint employment would create harmful incentives. It could discourage accurate documentation of hours worked, safety training, legal compliance, training completion,

background checks, certification, billing, contract performance, or payroll administration. Workers benefit from accurate records. They do not benefit from a rule that makes businesses hesitant to create or maintain records that can prove compliance and identify problems.

AFFT recommends that the final rule's preamble state that employment records are probative only to the extent they reflect or facilitate the putative joint employer's meaningful control over hiring, firing, schedules, supervision, conditions of employment, or pay. Records maintained for legal compliance, safety, quality control, brand standards, billing, audits, training, technology support, or administrative convenience should not be treated as meaningful evidence of joint employment. Even where records qualify as employment records, their maintenance should carry limited weight absent other facts showing actual employment-type control.

VIII. The Final Rule Should Preserve the Distinction Between Mandatory Directions, Recommendations, and Incidental Impacts

AFFT supports proposed § 791.115(d), which addresses indirect control. The proposal provides that indirect control is exercised through mandatory directions to another employer that controls the employee, but that the other employer's voluntary decision to grant a potential joint employer's request, recommendation, or suggestion does not constitute indirect control that can demonstrate joint-employer status. It also provides that acts incidentally impacting the employee do not indicate joint-employer status. 91 Fed. Reg. at 21920.

This distinction is essential. Workers benefit when businesses can share recommendations, model policies, safety guidance, best practices, training materials, and compliance resources. But if every recommendation can be recast as indirect control, businesses will have every reason to say less. The final rule should preserve incentives for entities to recommend lawful, safe, and worker-protective practices without fear that such recommendations will be treated as control over another employer's workforce.

The distinction also reflects common sense. A customer that asks a contractor to use certain safety equipment on site is not necessarily supervising the contractor's employees. A franchisor that recommends a model scheduling practice is not necessarily setting employees' schedules. A business that asks a vendor not to send a worker who engaged in misconduct or violated site safety rules is not necessarily firing that worker. A company that sets delivery windows, quality standards, product specifications, or customer-facing requirements may affect how another business performs its contract, but that does not mean the company controls the employees' terms and conditions of employment.

AFFT recommends that DOL add preamble language explaining that a business partner's recommendation, request, model policy, guidance document, training resource, or optional technology tool does not constitute indirect control unless the facts show that the putative joint employer requires the primary employer to adopt or implement the measure in a way that meaningfully controls essential employment terms. This clarification would protect workers by encouraging the dissemination of useful compliance and safety resources while preserving liability for entities that actually direct employment decisions.

IX. Additional Factors Should Not Become an Open-Ended Catch-All

AFFT supports a totality-of-the-circumstances analysis, but the final rule should not allow additional factors to become an open-ended catch-all that overwhelms the four-factor vertical framework. The Department proposes that additional factors may be relevant where they are material and appropriate, but that additional factors relating to whether the employee is economically dependent on the potential joint employer are not relevant to determining whether that person is a joint employer. 91 Fed. Reg. at 21920-21. AFFT supports that general approach.

The distinction between joint employment and independent-contractor status is important. Economic-dependence factors may be relevant to whether a worker is an employee or an independent contractor. But once there is no dispute that the worker is an employee of one employer, the joint-employer question asks whether another entity also functions as the worker’s employer. That inquiry should focus on employment-type control and other facts that show whether the putative joint employer shares or codetermines the workers’ essential employment terms.

An unbounded catch-all would undermine the clarity the Department wants to provide. Litigants could point to virtually any aspect of a business relationship—economic significance, brand standards, contractual dependence, product specifications, customer expectations, training, audits, or ordinary coordination—and argue that it should count as an additional factor. That approach would recreate the uncertainty the rule is designed to reduce. It would also make it harder for workers and small employers to understand their rights and responsibilities without expensive legal advice.

AFFT therefore recommends that the Department say that additional factors should be considered only when they are probative of whether the potential joint employer meaningfully controls essential terms and conditions of employment or otherwise functions as an employer of the employee. Additional factors should not be used to dilute the protections in § 791.125, to transform economic dependence into joint employment, or to treat ordinary commercial relationships as employment relationships.

This limitation is particularly important for franchising. Without it, plaintiffs or investigators could treat the very features that make a franchise a franchise—brand value, operating systems, training, quality control, customer expectations, and contractual uniformity—as additional factors supporting joint employment. That would undermine proposed § 791.125(a). The final rule should avoid that result by making clear that additional factors cannot be used as a back door to penalize franchising or other lawful business models that the rule itself treats as neutral.

X. The Department Should Retain the Horizontal Joint-Employment Standard

AFFT also supports the Department’s decision to retain the horizontal joint-employment analysis. Horizontal joint employment raises different concerns than vertical joint employment. In a horizontal scenario, the employee works separate hours for separate employers, and the question is whether those employers are sufficiently associated with respect to the employee’s employment that their hours should be aggregated for FLSA purposes. Proposed § 791.120 appropriately focuses on whether the employers are acting independently and are disassociated with respect to the employee’s employment, or whether they are sufficiently associated to be joint employers.

The horizontal standard protects workers by preventing associated employers from dividing hours in a way that avoids overtime or other obligations. It also protects clarity by distinguishing genuinely separate employment relationships from arrangements to share employees, interchange employees, or operate

through common control with respect to the particular worker. AFFT supports the Department's proposal to preserve that distinction.

XI. Conclusion

AFFT appreciates the Department's effort to restore a clear and uniform joint-employer framework. American Workers are best protected when the law identifies the entity(ies) that actually controls their employment terms, when compliance responsibilities are predictable, and when businesses remain free to provide training, safety guidance, legal-compliance resources, and other support that can improve workplace conditions.

AFFT therefore supports the Proposed Rule with the clarifications described in this Comment. The final rule should preserve actual, meaningful control over essential employment terms as the principal guidepost; retain the balanced reserved-control standard in proposed § 791.115(c); strengthen and build out the franchisor/franchisee protections in § 791.125; preserve the limited weight of employment records and administrative functions; maintain the distinction between mandatory directions, recommendations, and incidental impacts; and ensure that additional factors do not become an open-ended catch-all.

For these reasons, AFFT respectfully requests that the Department finalize the Proposed Rule with the clarifications and additions requested in this Comment.

Sincerely yours,



Chip Rogers
Chief Executive Officer
AMERICANS FOR FAIR TREATMENT