PMAA WEEKLY REVIEW

Joint Employer Trademark Protection Bill Introduced

On Tuesday, Rep. Steve Chabot (R-OH) and Rep. Henry Cuellar (D-TX) introduced H.R. 6695, the "Trademark Licensing Protection Act of 2018," legislation that would bar franchisers from being classified as a joint employer if its actions enforce trademark protection standards. This change would shield franchisers from certain joint-employment lawsuits.

The bill would update the Trademark Act of 1946, clarifying that enforcing trademark standards is not establishing an employment relationship between the owner of the trademark and the related company.

PMAA and other business groups have been pushing Congress to rewrite the National Labor Relations Board (NLRB) standard for joint employment. Under President Obama, the Board ruled that franchisers need exercise only indirect control over franchisees to be held liable.

In March, the NLRB voted to vacate a December 2017 decision, Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co., which overturned the 2015 ruling that made it easier to hold companies liable for labor violations committed by their franchisees or contractors.

The December determination found that to be classified a "joint employer," a business must have a direct and immediate control over the employees in question. Browning-Ferris, issued under President Obama, said a business could be classified a joint employer even if its relationship to the employees in question were indirect.

Now the Browning-Ferris standard is back in place, making it easier for employers to be found jointly liable over a particular employee. The reason the ruling was vacated is because NLRB Board member William Emanuel's former law firm had represented a party to the original Browning-Ferris decision and William should have recused himself from the case.

Late last year, the House passed the "Save Local Business Act," which would reverse the NLRB 2015 Browning-Ferris decision by narrowing the circumstances under which businesses can be classified a joint employer. Under Browning-Ferris, companies that exert only "indirect" control over franchisees may still be joint employers. The bill would revert to a standard of "direct" control. Following last year's finding, the legislation was not considered necessary except to prevent a future Democratic NLRB from switching the ruling back sometime in the future.