

# JOINT EMPLOYER STANDARD

## Congress Must Restore Joint Employer Standard

### Background:

A “joint employer” finding is significant. Companies that are joint employers may be held jointly responsible for legal compliance and collective bargaining obligations related to the jointly employed workers. Previously the National Labor Relations Board (NLRB) maintained that separate entities are considered joint employers only if they share direct control over, or co-determine, essential terms and conditions of employment. The NLRB has issued a proposed rule that would render more employers subject to being deemed a joint employer of another company’s employees. inaction.

### Action Needed:

Cosponsor the Save Our Local Business Act (H.R. 2826 / S. 1261)

The bill clarifies that two or more employers must have “**actual, direct, and immediate**” control over employees to be considered joint employers.

### AGC Message:

- **Contractors could become responsible for employment policies for unrelated subcontractors.** A new, relaxed standard could render one company a joint employer of an unrelated company’s workers when the putative joint employer has exercised only indirect control over those workers’ terms and conditions of employment through an intermediary, or even if it has the potential to exercise control but has never actually exercised control.
- **Employers left unable to predict when Joint Employer relationship exists.** The vagueness of the totality of circumstances test could leave employers with almost no guidance as to when they may be crossing the line under the NLRA and, therefore, left unable to determine appropriate actions to prevent such a finding.
- **Disruptive to long-standing standards in labor law and potentially change the way the industry operates.** The change could have a destabilizing impact on well-settled subcontracting practices in the construction industry, where critical issues such as safety and scheduling often dictate that a contractor have some say in how its subcontractors’ employees behave and have some oversight in their terms and conditions of employment.
- **Small businesses are the most vulnerable.** They are less likely to have the legal advice, staff time, or bargaining power to structure business arrangements that minimize their risk of inadvertently becoming a “joint employer” under the new standard.