

Jason Campbell Weighs in on NLRB's Decision to Reinstate the *Browning-Ferris* Standard

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Labor & Employment attorney Jason Campbell was quoted in the *Daily Journal* article, "NLRB Vacates Ruling, Re-Establishing Lower Standard for Joint Employer Liability," published on February 28, 2018. The article discusses the National Labor Relations Board's (NLRB) decision to overturn a previously established precedent known as the *Browning-Ferris* standard.

In the article, Jason explains that the previous standard allowed companies to more easily avoid joint status when using contractors or franchisees. "Lots of companies have agreements in the contractor franchisee context where they may reserve some rights that have an effect on the employee relationship, but if they never used them it would be clearer to them they were not open to that liability under the pre-*Browning-Ferris* standard. This change made it so that a joint relationship could be found regardless of whether the company exercised the control, even if they have unexercised control reserved that they never really used."

Jason notes that the renewed *Browning-Ferris* standard is tougher for employers to analyze and affable to employees seeking to lodge a complaint. It may also allow employees to ally with contractors in collective bargaining, despite having separate employers.

"The regular employees and the contractor could together seek to unionize, and be included in the bargaining interest even though they're employed by separate entities with different interests. Employers need to watch this closely to see what the board is going to do and what the court and congress might do with it," he said.

Jason cautions that, in light of this recent decision, employers should check their franchisee and contractor agreements for liability exposure.

"Short term, to the extent that employers went back and revised franchisee and contractor agreements in light of *Hy-Brand*, at least today, it looks like you may have to go back and review those again to make sure you're avoiding the joint employer issue under *Browning-Ferris*," he said.

[Learn more about the NLRB's decision in our Labor & Employment Practice Briefing.](#)

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