

Congress of the United States
House of Representatives
Washington, DC 20515

March 1, 2018

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20010

Dear Secretary Acosta:

As the Department considers an association health plan rule, I write with concern for certain entities potentially being held as “joint employers.” While I support the proposed rule’s intent to increase small businesses’ ability to provide affordable, comprehensive coverage for employees, I hope you will include a provision clarifying that businesses who utilize business format franchising will not be subject to joint employment liability based on their offering of a Small Business Health Plan.

Allowing small businesses to band together as a single group and purchase insurance in the large group market may reduce administrative costs through economies of scale and strengthen their bargaining position in the health insurance market. Most importantly, the flexibility for expanded Small Business Health Plans is a step towards improving access to coverage for employees and their families.

As you know, those small businesses that utilize the franchise business model have a great need for expanded and flexible Small Business Health Plans. The model perhaps is the best example of how economies of scale can be utilized to make the delivery of products and services more affordable for small business owners, the independent, local franchisees, and those businesses’ customers. For example, franchisors currently use their bargaining power to negotiate and efficiently distribute products in the manufacturing and agriculture industries throughout their systems. If the benefits of economies of scale can be translated to the purchase of health insurance, the franchise system will greatly improve.

In order to maximize the benefits of the franchise business model in health care delivery, DOL’s final rule should include language that ensures franchises are not at risk of joint employment liability based on the offering of a Small Business Health Plan. Federal and state employment laws have traditionally found that a joint employer is one who exerts direct and immediate control over essential employment terms of another entities’ employees. As you know, the tests used to determine joint employment status have become increasingly vague, even allowing for the analysis to be made based on factors that make “indirect” or “unexercised reserved control” be determinative.

If this language is not included, franchise businesses will be reluctant to even consider offering a Small Business Health Plan, impeding the success of the rulemaking. With the inclusion of language to ensure franchises who offer a Small Business Health Plan are not joint employers, the rule will maximize effectiveness and increase access to affordable, quality coverage at an excellent rate.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bradley Byrne', with a long horizontal flourish extending to the right.

Bradley Byrne
Chairman, Workforce Protections Subcommittee
Committee on Education and the Workforce