



The Daily Dish

The FTC and Franchises

DOUGLAS HOLTZ-EAKIN | MARCH 31, 2023

AAF's Isabella Hindley recently filed [comments](#) in response to a Federal Trade Commission (FTC) Request for Information (RFI) on provisions of franchise agreements and franchisor business practices, including how franchisors may exert control over franchisees and their workers. The RFI was interesting (at least to Eakinomics) for two reasons.

First, it is a continuation of a pattern of "regulation by harassment" - RFIs, blog posts, sub-regulatory guidance, etc. - by the administration's agency heads. The Consumer Financial Protection Bureau has raised this to a fine art, but others are close behind. Second, the effort is nearly completely redundant since the recent proposed changes to the Joint Employer Standard and the Employee or Independent Contractor Classification rules have already put the franchise business model in a state of siege.

As part of the research for the comments, Hindley updated her [research](#) on the impact of the latter two rules, noting that "under the proposed rules, franchisors would face increased employment costs of at least \$5.7 million per hour across all franchisors and spend more time negotiating unfair labor and collective bargaining claims. These added burdens will disincentivize participation in the franchise business model, leading to a significant impact on the economy and labor market, as franchising currently accounts for approximately \$825 billion (3 percent) of the United States gross domestic product and employs 8.4 million workers."

Given this, it is unsurprising that her basic guidance to the FTC is: Go slow. She notes, "The success of the franchise business model lies in the unique and mutually beneficial relationship between franchisees and franchisors. Franchisees are more likely to remain in business after two years than independent businesses due to franchisor-provided support such as brand recognition, general business format, and various other assistances. The franchisor benefits from rapid growth and increased brand recognition due to the franchisee-supplied capital that is necessary for business expansion."

This relationship is a delicate balance. She warns that limiting franchisor involvement would undercut their support and endanger the success of franchises. At the same time, giving the franchisor more authority would practically guarantee reclassification of franchisors as joint employers and lead to a different demise of the franchises. The FTC would be best advised to keep its hands off the franchise business model.