



The Daily Dish

Reversing the Joint Employer Ruling

DOUGLAS HOLTZ-EAKIN, PATRICK HEFFLINGER | JULY 24, 2017

[This week the Senate is expected to hold a vote](#) on a motion to proceed on the House-passed health care bill, the American Health Care Act (AHCA). Senator Barrasso (R-WY) told CBS's Face the Nation on Sunday that Senators can then begin offering amendments and working towards passing the legislation.

[The House will vote](#) on a new Russian sanctions bill on Tuesday. The bipartisan bill, passed by the Senate last month, would impose a new round of Russian sanctions while limiting the president's ability to unilaterally lift sanctions on Russia. The bill is expected to easily pass the House and arrive on the president's desk this week.

[The White House stated](#) on Sunday that they are "supportive of being tough on Russia, particularly in putting the sanctions in place."

Eakinomics: Reversing the Joint Employer Ruling

The House is taking two legislative runs at the Obama-era "joint employer" doctrine. An earthquake hit the franchise and contracting world in 2015 when the National Labor Relations Board (NLRB) ruled that Houston-based Browning-Ferris Industries was responsible for the treatment of employees from Leadpoint Business Services. The latter had been hired to staff a recycling facility in California, and the ruling meant that a company can more easily be pulled into a contractor's collective bargaining negotiations and be held liable for a contractor's labor law violations as well.

The NLRB aimed to reverse the long-term decline in private sector union membership, and asserted that the old joint employer standard was to blame. The [evidence](#) suggests otherwise, and the new standard could completely upend the franchise business model.

The Trump Administration took the [first steps](#) to reverse the 2015 ruling. In June, the Department of Labor negated the Obama Labor Department's decision to expand the "joint employer" doctrine for application under the Fair Labor Standards Act. Good news: that action narrows the application of the standard. Bad news: it doesn't undo the broader damage of the Browning-Ferris decision.

Step one in the House approach is an appropriations "[rider](#)" that would prohibit the NLRB from applying the "indirect control" standard set out in Browning-Ferris, and would require the Board to revert back to the pre-Browning-Ferris "direct control" standard. That is a stopgap that would, if it became law, freeze implementation for a year. Meanwhile, House members are [drafting](#) a bill to repeal the NLRB's 2015 ruling.

Legislation is the only sure way to permanently undo the Browning-Ferris standard. For that reason, a permanent fix will have to be bipartisan to pass the Senate threshold of 60 votes.