Research

Update: Trends in Hotel Employment, Hours, and Wages Since the NLRB Broadened the Joint Employer Standard

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EXECUTIVE SUMMARY

This study, building on previous American Action Forum (AAF) research, explores trends in hotel industry employment and wages since the National Labor Relations Board's (NLRB's) 2015 decision to broaden the joint employer standard. Last year, AAF found that franchise employment growth in the hotel industry slowed substantially in 2016, the year immediately following the NLRB decision. This study finds that hotel franchises continued to struggle in 2017. Overall, the joint employer ruling has likely placed hotel franchises at a distinct disadvantage, considering that in the two years since the 2015 decision, employment in hotel franchises has lagged considerably behind employment in non-franchises.

In the full two years following the 2015 ruling:

- The annual franchise employment growth rate declined by 1.4 percentage points, while non-franchise employment growth accelerated;
- Hotel industry-wide average real wages and real weekly earnings stalled;
- Growth in total wage earnings declined by 3.9 percentage points in the hotel industry as a whole.

The slowdown in franchise hotel job growth and coinciding acceleration in non-franchise job growth suggest that the broadened joint employer standard may be responsible for the industry-wide slowdown in wage growth. Through 2017, the entire private sector also experienced a decline in labor market growth after the introduction of the new joint employer standard. Many of the negative trends, however, are more pronounced in the hotel industry, suggesting that broader macroeconomic forces are not solely responsible and that the broadened joint employer standard may be placing an extra burden on the hotel industry.

INTRODUCTION

The joint employer issue is back in the spotlight after the NLRB's announcement that it will issue a new regulation to reverse its 2015 decision in Browning-Ferris Industries (BFI). In August 2015, the NLRB's decision in BFI fundamentally broadened the legal definition of "joint employer" so that an employer is more likely to be held responsible for the employment and pay conditions in a separate business. Perhaps no businesses are more impacted by this ruling than franchises, as franchisor corporations have become more likely to be held responsible for the labor practices of independent franchisees.

A previous AAF study examined labor market trends in one of the industries that most depend on franchises: hotels. Roughly one-third of all hotel workers are employed by a franchise. The previous study found that in 2016, the first year following the BFI ruling, the hotel industry struggled due to stagnation in franchises. This study builds on the previous one by incorporating data from 2017 to examine trends in hotel employment in the two years since BFI. It finds that franchise employment in the hotel industry continued to stagnate through 2017. The slowdown occurred even though non-franchise hotel employment accelerated, suggesting that the broadened joint employer standard may be placing a unique burden on hotel franchises.

THE AMBIGUOUS AND UNCERTAIN JOINT EMPLOYER STANDARD

In recent years, the joint employer standard has been anything but consistent. The NLRB first brought uncertainty to the joint employer standard with its 2015 ruling in BFI.[1] Before 2015, the NLRB had held since 1984 that a firm is a joint employer only if it exercises "direct" control of the employees in another business. For instance, decisions about hiring, firing, supervision, and wages all constituted direct control. The NLRB's 2015 ruling in BFI, however, created a new "direct or indirect" control standard that is highly ambiguous and could be applied to a broader array of business arrangements. Soon after, the Department of Labor (DOL) followed suit and issued an Administrative Interpretation that abandoned the traditional standard in favor of the new one in application of federal labor law.[2]

Under the Trump Administration, regulators have worked to return to the pre-BFI "direct control" standard. In June 2017, the DOL announced that it was reversing course and rescinding its Administrative Interpretation.[3] In contrast, the NLRB's attempts to overturn the 2015 decision have been less successful.

In December 2017, the NLRB ruled that two construction companies, Hy-Brand Industrial Contractors and Brandt Construction, are joint employers and thus jointly liable for unlawfully firing seven workers. In making that decision, however, the NLRB overturned its 2015 ruling, asserting that the two construction companies are only joint employers because one exercises direct control over the other's employees.[4] At the time, the Hy-Brand decision appeared to settle this issue. Just two months later, however, the NLRB's Inspector General issued a memorandum that board member William Emanuel should not have voted in Hy-Brand due to a conflict of interest.[5] Soon after, three members of the five-seated NLRB voted unanimously to vacate the Hy-Brand decision (they excluded William Emanuel from the vote and at the time there was an empty board seat).[6] In the vote to vacate Hy-Brand, the NLRB reinstated the 2015 joint employer standard.

Although the NLRB now has a full board, questions remain about William Emanuel's conflict of interest issues, and it is unable to address BFI in its traditional case-decision process.[7] Instead, it has decided to issue a regulation settling the matter.[8] The NLRB, however, is in the very early stages of issuing a regulation and it could be years before it does so due to the lengthy rulemaking process. Members of Congress are also working to return confidence and clarity to the joint employer standard. Last year, the House of Representatives passed Representative Bradley Byrne's Save Local Business Act, which would establish in law the traditional "direct control" standard under both the National Labor Relations Act and the Fair Labor Standards Act.[9]

PREVIOUS AAF RESEARCH

Until the NLRB issues a new regulation or Congress enacts a new law, the uncertainty and ambiguity surrounding the broadened joint employer standard will threaten millions of franchise jobs.

The broadened joint employer standard inherently reduces the incentive to franchise. If a franchisor is more likely to be held responsible for a franchisee's workers, the franchisor will be less likely to sell franchise licenses to independent business owners and more likely to scale back logistical support to existing franchisees. As a result, there will be fewer franchises, which have been one of the most dependable sources of job creation in the United States since the end of the Great Recession. Previously, AAF found that since 2012, private sector franchise employment had grown 3.4 percent annually, while non-franchise jobs had only risen at a 2 percent annual rate. If the joint employer rule leads to franchise employment growth simply slowing to the non-franchise growth rate, 1.7 million jobs would be lost over the next 10 years.[10]

Last year, AAF examined how the broadened joint employer standard is specifically impacting the hotel industry, which significantly depends on the franchise business model. As of December 2017, franchise workers accounted for 7 percent of all private sector employees.[11] In the hotel industry, they represented over one-third of workers.[12] Since the end of the Great Recession, however, hotels have experienced weak job growth. Given its weakened condition and its significant reliance on franchises, hotels are perhaps most susceptible to the negative consequences of the joint employer standard.

AAF found last year that in the year directly after the 2015 ruling, hotel franchise employment growth slowed considerably, with the annual growth rate declining by 1.4 percentage points, from 1.8 percent between 2011 and 2015 to just 0.4 percent in 2016. Non-franchise employment growth only declined by 0.5 percentage points, from 1.9 percent to 1.4 percent annually. Additionally, industry-wide average wages and hours all flatlined in 2016. Annual growth of hotel real hourly wages, hours, and real weekly earnings declined by 1.1 percentage points, 0.8 percentage points, and 1.8 percentage points, respectively. The combined decline in the growth of employment, wages, and hours resulted in the growth of the sum of all wages earned by hotel workers (total wage earnings) declining by 7 percentage points.[13]

While the results from 2016 are startling, they are based on only one year of data since the 2015 joint employer ruling, and franchise hotels may have simply had an off year. Thus, to determine whether the broadened joint employer standard could be playing a role in these trends, it is important to continue tracking the hotel industry's labor market over time. Since two full calendar years have passed since the 2015 decision, this study examines the hotel industry through 2017.

HOTEL LABOR MARKET TRENDS SINCE THE 2015 JOINT EMPLOYER DECISION

Incorporating 2017 data reveals that franchises within the hotel industry struggled through the two years after the 2015 joint employer ruling. Table 1 contains annual job growth rates before and after BFI in all hotels, franchises, and non-franchises.

Table 1: Job Growth in Hotels Overall and by Franchise Status[14], [15], [16]

Category	Pre-BFI	Post-BFI	Percentage Point Change
Total	1.9%	1.5%	-0.4

Franchise	1.8%	0.4%	-1.4
Non-Franchise	1.9%	2.1%	0.2

Overall, hotel industry employment growth decelerated since the BFI decision. In the years leading up to the BFI decision (2011 to 2015), hotel employment grew 1.9 percent per year. After BFI (2015 to 2017), hotel employment grew 1.5 percent annually.

The overall growth in hotel employment, however, masks a major shift that occurred among the industry's franchises since BFI. In the years leading up to BFI, franchise and non-franchise hotel employment grew at similar annual rates of 1.8 percent and 1.9 percent, respectively. After BFI, however, franchise job growth stagnated, while non-franchise job growth accelerated. Specifically, the annual hotel franchise job growth rate dropped by 1.4 percentage points, from 1.8 percent before BFI to just 0.4 percent after BFI. Meanwhile, non-franchise employment growth accelerated by 0.2 percentage points, from 1.9 percent annually to 2.1 percent annually. Thus, the slowdown in hotel job growth since the BFI decision in 2015 is due entirely to stagnation in franchise employment.

To put the decline in franchise job growth in perspective, had franchise hotel employment continued to grow at its pre-BFI 1.8 percent annual rate, at the end of 2017 there would have been over 18,000 additional franchise employees than there actually were. That figure represents a 2.8 percent increase in franchise hotel employment in December 2017. Alternatively, had franchise hotel employment continued to track with non-franchise employment and its growth rate accelerated to the 2.1 percent non-franchise post-BFI annual rate, by December 2017 franchise hotels would have employed over 22,000 additional workers. That figure equates to a 3.4 percent rise over the December 2017 level.

The divergence between franchise and non-franchise employment suggests that the substantial slowdown in franchise employment growth since BFI is likely not due to broader competitive shifts impacting the entire hotel industry, such as the introduction of Airbnb. Instead, it is becoming increasingly apparent that the broadened joint employer standard could be placing a unique burden on hotel franchises and causing job growth to stall. The figures also suggest that under the broader joint employer standard, franchisors may be reducing the number of franchise licenses they sell to independent business owners and opting to open corporate-owned hotels instead.

It is important to note that while the trends found among franchise businesses are consistent with the previous AAF study, the growth rates of non-franchises are a departure. The previous study found that non-franchise hotel employment growth decreased somewhat in 2016. The slight acceleration that occurred over the two-year period was due to significant acceleration in non-franchise hotel job growth in 2017.

The hotel industry's shift from franchise to non-franchise businesses may also, in part, be slowing earnings. Growth in hotel worker wages and hours have continued to decline since 2015. Table 2 contains hotel industry growth in average wages and hours before and after the BFI decision.

Table 2: Growth in Wages, Hours, Weekly Earnings, and Total Wage Earnings in Hotels[17], [18]

Category	Pre-BFI	Post-BFI	Percentage Point Change*

Real Hourly Wages	1.2%	0.1%	-1.1
Hours	0.5%	0.2%	-0.3
Real Weekly Earnings	1.7%	0.3%	-1.4
Total Wage Earnings	5.7%	1.9%	-3.9

*Percentage point changes may not sum to post-BFI growth rates due to rounding.

In the two years since the decision, growth in real hourly wages in hotels slowed practically to a halt. After rising 1.2 percent annually from 2011 to 2015, growth in real hourly wages declined to just 0.1 percent annually from 2015 to 2017. Annual growth of work hours slowed from 0.5 percent to 0.2 percent after BFI, a 0.3 percentage point decrease. Due to the deceleration in both real wages and hours, annual growth in real weekly earnings declined by 1.4 percentage points from 1.7 percent to just 0.3 percent. Additionally, annual growth in the sum of all pay earned by workers in the hotel industry (total wage earnings) declined by 3.9 percentage points from 5.7 percent to 1.9 percent.[19]

It is important to note that the slowdown in labor market growth across the entire hotel industry is less pronounced than reported in the previous study, likely because of the acceleration in non-franchise employment. Yet, noticeable downward shifts since the BFI decision remain, suggesting that the continued stagnation in franchise employment is also resulting in slower earnings growth.

Consistent with the previous study, similar shifts also occurred in the entire private sector but tended to be less pronounced. While this correlation suggests that a decline in labor market growth in the hotel industry may be due, in part, to broader macroeconomic trends, it remains apparent that the broadened joint employer standard may be placing a unique burden on hotels.

Table 3 contains wage, hours, and employment growth rates in the entire private sector before and after the BFI decision.

Table 3: Growth in Employment, Wages, Hours, Weekly Earnings, and Total Wage Earnings in the Private Sector[20], [21]

Category	Pre-BFI	Post-BFI	Percentage Point Change*
Employment	2.3%	1.5%	-0.8
Real Hourly Wages	1.0%	0.6%	-0.4
Hours	0.1%	-0.1%	-0.3

Real Weekly Earnings	1.1%	0.4%	-0.7
Total Wage Earnings	5.7%	2.7%	-2.9

*Percentage point changes may not sum to post-BFI growth rates due to rounding.

On most fronts, the decline in labor market growth was far less severe in the entire private sector than in the hotel industry, particularly regarding wages. Annual growth in real hourly wages slowed from 1 percent to 0.6 percent, a 0.4 percentage point decrease. Remember, the hotel industry experienced a 1.1 percentage point decrease in real wage growth. Annual growth in real weekly earnings declined by 0.7 percentage points in the private sector, while it declined by 1.4 percentage points in the hotel industry. Finally, annual growth in the total wage earnings of the private sector was 5.7 percent preceding 2015 and 2.7 percent in the years following, a 2.9 percentage point declined. For comparison, annual growth in total wage earnings fell by 3.9 percentage points in the hotel industry.

The two exceptions were employment and average weekly hours growth. Annual growth in private sector employment decelerated by 0.8 percentage points from 2.3 percent before the BFI decision to 1.5 percent after. Annual employment growth in hotels declined by 0.4 percentage points. The smaller decline in hotel employment growth reflects acceleration in non-franchise hotel jobs, while franchise employment stagnated. Additionally, annual growth in average weekly hours declined by 0.3 percentage points in both the entire private sector and the hotel industry specifically.

CONCLUSION

The NLRB's broadened joint employer standard reversed decades-old precedent and is particularly consequential for the franchise business model. While franchises are among the most significant sources of job creation in the country, not every franchise-dense industry has been performing well. The hotel industry is particularly vulnerable to the economic consequences of the new joint employer standard and two years of data indicate that franchise workers in the industry may already be paying the price. There has been a substantial slowdown in franchise employment growth in the hotel industry since the NLRB issued the new standard, while non-franchise hotel job growth accelerated. The anemic job growth in hotel franchises may have led to declining growth in average earnings across the entire industry. Moreover, the negative wage trends tend to be more pronounced in hotels than in the entire private sector, indicating that they are likely not only due to broader macroeconomic forces.

[1] "Board Issues Decision in Browning-Ferris Industries," National Labor Relations Board, August 27, 2015, https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-browning-ferris-industries.

[2] Tammy McCutchen and Michael J. Lotito, "DoL Issues Guidance on Joint Employment under FLSA," Littler, January 20, 2016, https://www.littler.com/publication-press/publication/dol-issues-guidance-joint-employment-under-flsa.

[3] "US Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance," News Release, U.S. Department of Labor, June 7, 2017, https://www.dol.gov/newsroom/releases/opa/opa20170607.

[4] "NLRB Overrules Browning-Ferris Industries and Reinstates Prior Joint Employer Standard," Office of Public Affairs, National Labor Relations Board, December 14, 2017, https://www.nlrb.gov/news-outreach/news-story/nlrb-overrules-browning-ferris-industries-and-reinstates-prior-joint.

[5] David P. Berry, "Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberations of a Particular Matter," Memorandum, Office of the Inspector General, National Labor Relations Board, February 9, 2018, https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf.

[6] Chris Opfer and Hassan A. Kanu, "Labor Board Scrapts Controversial Joint Employer Decision (Updates)," Bloomberg Law, February 26, 2018, https://bnanews.bna.com/daily-labor-report/labor-board-scraps-controversial-joint-employer-decision-updated.

[7] Ted Hesson, "OIG: Emanuel violated ethics pledge," Morning Shift, Politico, March 23, 2018, https://www.politico.com/newsletters/morning-shift/2018/03/23/oig-emanuel-violated-ethics-pledge-148836.

[8] "NLRB Considering Rulemaking to address Joint-Employer Standard," Office of Public Affairs, National Labor Relations Board, May 9, 2018, https://www.nlrb.gov/news-outreach/news-story/nlrb-considering-rulemaking-address-joint-employer-standard.

[9] Save Local Business Act, H.R.3441, Rep Bradley Byrne, 115th Congress, 2017, https://www.congress.gov/bill/115th-congress/house-bill/3441?q=%7B%22search%22%3A%5B%22save+local+business+act%22%5D%7D&r=1.

[10] Ben Gitis, "The NLRB's New Joint Employer Standard, Unions, and the Franchise Business, Model," American Action Forum, April 26, 2017, https://www.americanactionforum.org/research/nlrbs-new-joint-employer-standard-unions-franchise-business-model/.

[11] "ADP National Franchise Report, May 2018" Historical Data, ADP, https://www.adpemploymentreport.com/2018/May/NFR/NFR-May-2018.aspx.

[12] Found by dividing ADP hotel franchise employment by total accommodations employment reported by the Bureau of Labor Statistics' Quarterly Census of Employment and Wages, https://data.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables.

[13] Ben Gitis, "Trends in Hotel Employment, Hours, and Wages since the NLRB Broadened the Joint Employer Standard," American Action Forum, September 11, 2017, https://www.americanactionforum.org/research/trends-hotel-employment-hours-wages-since-nlrb-broadened-joint-employer-standard/.

[14] Author's analysis of "ADP National Franchise Report, May 2018" Historical Data, ADP, https://www.adpemploymentreport.com/2018/May/NFR/NFR-May-2018.aspx and "Quarterly Census of Employment and Wages," Bureau of Labor Statistics, https://data.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables.

[15] The pre-BFI growth rates are the compounded annual growth rates from December 2011 to December

2015. The pre-BFI period starts in 2011 because that is the first year for which ADP makes franchise employment data available. In the post-BFI period, the growth rate represents the change in employment from December 2015 to December 2017.

[16] Since ADP only provides monthly franchise employment data for the accommodations industry, total accommodations employment data comes from the Quarterly Census of Employment and Wages (QCEW). To calculate non-franchise employment levels, we simply subtracted ADP industry franchise employment estimates from QCEW total industry employment estimates.

[17] Real hourly wage, hours, and real weekly wages are from Current Employment Statistics, Bureau of Labor Statistics, https://www.bls.gov/data/.

[18] Total wage earnings are from Quarterly Census of Employment and Wages, Bureau of Labor Statistics, https://www.bls.gov/data/.

[19] Percentage point change does not sum to post-BFI growth rate due to rounding.

[20] Real hourly wage, hours, and real weekly wages are from Current Employment Statistics, Bureau of Labor Statistics, https://www.bls.gov/data/.

[21] Employment and total wage earnings are from Quarterly Census of Employment and Wages, Bureau of Labor Statistics, https://www.bls.gov/data/.