

## Senators Express Concern Over Labor Board's Planned Rulemaking

May 30, 2018 | [National Labor Relations Board, Labor Relations](#)



**David J. Pryzbylski**  
Partner

Several U.S. Senators recently sent a letter to National Labor Relations Board (NLRB) Chairman John Ring expressing concern over the agency's [planned rulemaking](#) with respect to the standard the board uses for evaluating "joint employment," according to a [new report](#) from *Bloomberg BNA*. Specifically, Sens. Elizabeth Warren (D-Mass.), Bernie Sanders (I-Vt.), and Kirsten Gillibrand (D-N.Y.) stated in their letter that the potential rulemaking may be an attempt to "evade the ethical restrictions" pertaining to NLRB members – a reference to some conflicts of interest [issues](#) that have popped up in recent months at the agency. This all stems from the fact that the NLRB [recently announced](#) the agency is considering rulemaking to modify the standard the board uses when evaluating whether joint employment exists. This has been a hot issue since the NLRB issued its now infamous *Browning-Ferris* decision in August 2015 that significantly altered its joint employment standard. In *Browning-Ferris*, the NLRB stated that it will no longer require that a company actually exercise control over a workforce's terms and conditions of employment in order to be deemed a joint employer; rather, "reserved" or "indirect" (i.e., potential) control is sufficient. Many anticipate that the current NLRB will use rulemaking to revert to a standard where direct control generally is required for a finding of joint-employment. This remains a critical issue to many in the business community, particularly those in franchise settings and those utilizing staffing companies. Stay tuned.

### RELATED PRACTICE AREAS

Labor and Employment  
Labor Relations  
National Labor Relations Board (NLRB)

### RELATED TOPICS

joint employer  
NLRB