

NLRB's Controversial Joint-Employer Standard In House Appropriations Committee's Crosshairs

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The NLRB's controversial 2015 *Browning-Ferris* decision greatly expanding the definition of "joint-employer" to include those employers who exert only indirect control over employees may not be around much longer, as House Republicans are attempting to use the power of the purse to rein in the Board. On July 13, the House Appropriations Subcommittee on Labor, Health and Human Services, and Education voted to approve a draft spending bill for fiscal year 2018 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. Not surprisingly, the vote was along strict party lines, with Republicans voting for the draft bill. This measure will likely face strong resistance from congressional Democrats. This move comes while we await congressional action on President Trump's two Republican nominees to fill the vacancies on the Board. If the nominees, William Emanuel and Marvin Kaplan, are approved, there is good reason to believe they would join Chairman Philip Miscimarra, who vigorously dissented in *Browning-Ferris*, and overturn the decision. However, even assuming Emanuel and Kaplan are approved, there is no telling how long it might take for a case raising concerns about *Browning-Ferris* to come before the Board, giving the new Republican majority an opportunity to reverse it. With this draft spending bill, House Republicans seek to avoid that waiting game and force the NLRB's hand, whether it consists of a Democratic or Republican majority. However, in these days of short-term continuing resolutions just to keep the government afloat, passing a budget is not an easy task for Congress. Nonetheless, there may be hope on the horizon for employers struggling under *Browning-Ferris*.

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