

U.S. Rep. Pocan: CPC calls on National Labor Relations Board to withdraw anti-worker proposed rule on joint employer status

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Contact: [Ron Boehmer](#), 202-225-2906
[Vedant Patel](#), 202-379-6013

WASHINGTON, DC – Congressional Progressive Caucus Co-Chairs Mark Pocan (WI-02) and Pramila Jayapal (WA-07) led 48 House Democrats in [writing](#) to the National Labor Relations Board (NLRB), calling for the agency to withdraw “The Standard for Determining Joint Employer Status” proposed rule, which would overturn the Obama-era *Browning-Ferris* standard of joint-employment. This new pro-corporate rule would undermine workers’ rights to collectively bargain with their true employer while exempting corporations from their legal obligations to their employees.

“We write in strong opposition to the proposed rule, ‘The Standard for Determining Joint Employer Status.’ This proposed rule would narrow the standard for determining when employees have multiple employers under the National Labor Relations Act (NLRA). Doing so would undermine employees’ rights to bargain for better wages and working conditions with the businesses that control those terms and conditions,” wrote Members. “This rulemaking appears to be tainted by one National Labor Relations Board (NLRB) Member’s conflict of interest, and the NLRB has failed to allay concerns surrounding this appearance.”

“We are deeply concerned that the NLRB appears to have designed this rulemaking in order to facilitate the participation of Member William Emanuel. Member

Emanuel's former law firm, Littler Mendelson P.C., represents one of the parties in *Browning-Ferris*. In December, the NLRB overruled *Browning-Ferris* by lifting the dissent from that decision and incorporating it wholesale into its decision in *Hy-Brand Industrial Contractors*. Member Emanuel violated his ethics pledge by participating in *Hy-Brand*, because it was part of the same deliberative process as *Browning-Ferris*," continued Members. "As a result, the Inspector General notified Congress of 'a serious and flagrant problem and/or deficiency in the NLRB's administration of its deliberative process.' The NLRB's ethics official concluded that Member Emanuel violated his ethics pledge, and the NLRB vacated *Hy-Brand* shortly after, on February 26. Less than three months later, the NLRB announced that its intention to issue a rulemaking to overturn *Browning-Ferris*."

"As you noted in the aftermath of the *Hy-Brand* controversy, whenever the public calls into question the ethical underpinnings of the NLRB's work, the NLRB must ensure that 'it not only adheres to exacting standards of integrity and impartiality...but that it is perceived by the public as adhering to such standards.' Under your own terms, the NLRB must err in favor of protecting the public's confidence in its deliberative process. For the reasons detailed above, we urge the NLRB to withdraw the proposed rule," concluded the Members.

Approximately three million Americans are employed by a temporary staffing agency on any given day, often receiving less pay than the employees they work alongside who were directly hired by the client company. Whenever two or more entities co-determine or share control over the terms and conditions of employment, then both entities may be considered to be joint employers. The *Browning-Ferris* decision prevented corporations from dodging their legal obligations simply because they exercised control indirectly through their intermediary, or because they reserved control in their contract with the intermediary.

The full letter is available [here](#).