

Proposed Joint Employer Rule Could Expand Employer Liability

Small business owners know that employees are their most valuable resource and work hard to train and retain employees by creating a rewarding workplace. However, government mandates and regulations have made labor issues and the ability to fill open positions more complicated than ever. The Legal Center understands this dilemma and works to eliminate burdensome mandates and prevent cumbersome regulations that inhibit job creation.

Unfortunately, federal bureaucrats continue to propose rules that make it harder for small businesses to own, operate, and grow their businesses. The latest federal hurdle: a proposal by the National Labor Relations Board (NLRB) that would expand the standard for determining joint-employer status under the National Labor Relations Act.

The joint employer rule would take employment decisions away from small independent franchisees. NFIB has long argued that a less flexible and broader joint-employer standard would discourage large businesses, concerned with additional wage and hour liability, from hiring small companies.

This proposed rule rescinds a 2020 final rule that set the definition of joint employer as an employer that exercises substantial direct and immediate control over the essential terms and conditions of employment. NFIB supported the 2020 rule that made it easier for small businesses to maintain control over their operations. The NLRB now plans to expand the definition of joint-employer status to include those that have indirect and reserved forms of control over workers.

NFIB will be submitting comments to the NLRB. In addition, we are encouraging businesses with concerns or questions about the rule to contact the NFIB Small Business Legal Center at 800-NFIB-NOW or info@nfib.org.

Have more questions about the NLRB and union organizing? Take a look at the Small Business Legal Center's Guide to Managing Unionization Efforts, available at [NFIB.com/legal](https://nfib.com/legal).



Media Mentions

8/25/2022

Law 360: Justices Urged To Ax Harsher Foreign Account Tax Penalties

Law 360 references NFIB's amicus brief filed in *Bittner v. United States of America*.

<https://www.law360.com/articles/1524421/justices-urged-to-ax-harsher-foreign-account-tax-penalties>

9/1/2022

Oregon Business Report: NFIB CALLS COURT FOR LENIENCY TO CIVIL PENALTY PROSECUTIONS

The Oregon Business report mentions NFIB's amicus brief filed in the case *Bittner v. United States of America*. The article quotes Executive Director Elizabeth Milito. "Small business owners are continually complying with various federal regulations in operating their business ... [t]he penalties for violating these regulations can be extremely severe and potentially devastate small businesses that had good intentions to comply."

<https://oregonbusinessreport.com/2022/09/nfib-calls-court-for-leniency-to-civil-penalty-prosecutions/>

9/6/2022

Reuters: U.S. labor board to expand companies' 'joint employer' liability

Reuters quotes Executive Director Elizabeth Milito in reference to an expansion of joint employer liability by the National Labor Review Board. "The rule, if enacted, would significantly restrict the freedom of many small business owners ... This decision could have the effect of taking away employment decisions from small independent franchisees and putting those decisions into the hands of large corporations."

<https://www.reuters.com/legal/us-labor-board-expand-companies-joint-employer-liability-2022-09-06/>

9/9/2022

The Center Square: Municipalities in 'business-friendly' Georgia burden home-based businesses with more regulations

The Center Square and several other media sources quotes Executive Director Elizabeth Milito as Georgia legislators roll out regulations imposed on home-based businesses. "I think these municipalities are using a sledgehammer to crack a nut. Rather than them doing the work and parsing through what sort of business it is, they're just doing the initial check box. Are you an LLC? OK, you're in."

https://www.thecentersquare.com/georgia/municipal-ities-in-business-friendly-georgia-burden-home-based-businesses-with-more-regulations/article_14080c56-3085-11ed-b9ec-07308642f0ad.html



The Brief

FALL 2022

United States Supreme Court 2022-2023 Term Preview

NFIB Legal Center Represents Small Business in Several Critical Cases

In our summer newsletter, we reported on our 100%-win rate at the U.S. Supreme Court's 2021-2022 term. In the new term, which started on October 3rd, we hope to repeat that success in some extremely important cases for small businesses.

This list will grow as the term continues, but as of now, here are the cases that the NFIB Small Business Legal Center is participating in on behalf of small businesses.

Sackett v. Environmental Protection Agency

This case gives the Supreme Court the chance to finally determine what "waters of the United States" (WOTUS) means under the Clean Water Act (CWA). For years, the Environmental Protection Agency (EPA) has interpreted this phrase broadly to include any and all wetlands on a property, forcing landowners to seek costly permits and delay improvements to their own land. On October 3rd, the Supreme Court heard arguments in Mr. and Mrs. Sacketts' 15-year battle with EPA over the right to build a house. EPA claims a semi-soggy

portion of the Sacketts' Idaho property is a protected wetland under WOTUS law. The Legal Center's brief argues that the CWA limits EPA's powers to truly "navigable" interstate waters.

National Pork Producers v. Ross

California's Proposition 12 imposes animal cruelty standards on pork producers, suppliers, and farmers. The Supreme Court must determine whether California's law violates the Constitution's Commerce Clause, which limits the power of one state to interfere with interstate commerce. In asking for the law to be struck down, the NFIB Legal Center's brief argues that Proposition 12 obstructs interstate commerce in essence allowing California to dictate consumer laws for the rest of the country.

Bittner v. United States

In *Bittner*, the Supreme Court must decide whether a "violation" of the Bank Secrecy Act means the failure to report foreign accounts generally, or a "violation" exists for each foreign account not reported. Our brief argues that federal agencies like the Department of Labor should be lenient in finding multiple

statutory and regulatory violations.

Wilkins v. United States

Here the Supreme Court will decide how long a property owner has to sue the U.S. government in a property dispute. In this case, unbeknownst to Mr. Wilkins, the U.S. Forest Service opened a portion of Mr. Wilkins' private road to the public. The government tried to dismiss Wilkins' claim arguing that he waited too long to sue. The Legal Center's brief argues that in certain circumstances exceptions to statutes of limitations must be allowed in order for property owners to protect their rights.

To keep up with these cases and other legal developments, visit nfib.com/legal.

Keep up with our work at:
NFIB.com/legal

Don't forget to check out our Facebook page.

facebook.com/NFIB.legal

The NFIB Small Business Legal Center, a 501(c)(3) public interest law firm, protects the rights of America's small business owners by serving as the voice of small business in the courts and the legal resource for small business owners nationwide. It is not a legal defense fund for small business, but a legal tool to affect precedent-setting legal decisions that will influence small business' bottom line.

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THANK YOU TO OUR SUPPORTERS

By Elizabeth Milito Executive Director, NFIB Small Business Legal Center

As 2022 comes to a close, I want to personally thank you for your generous contributions to the Small Business Legal Center.

Without you, none of our efforts would be possible. The Legal Center had a positive year in advancing its two goals—representing the interests of small business in the courtroom, and educating small-business owners about potential legal pitfalls. This year, your donations went toward important projects to further these goals and, ultimately, to help you, our members.

The contributions we receive from our supporters are instrumental in our mission to reach out and educate small businesses across the nation. This includes materials to assist small business owners in operating their small business, whether printed handbooks such as our just-published Debt Collection Guide, the monthly webinar series, the helpful tips published on our website, our scholarly research papers, or the NFIB Small Business Legal Center SupportLine.

Your tax-deductible donations also allow us to stay active in the legal arena. Hopefully, you have read about our upcoming work in the U.S. Supreme Court, on page one, in addition to the other cases we've been involved in over the past year. For 2023, we plan to use our positive momentum to continue to gain ground for small businesses in the courts.

The Legal Center is excited to increase its courtroom involvement, especially in state cases across the country. We are challenging environmental climate rules issued by governors in Oregon and Pennsylvania that illegally circumvent the legislatures. As you know, a cornerstone of the Legal Center's work is to ensure that each branch of government stays in its delegated lane. In Oregon, our lawsuit argues that the Governor violated this tenant by enacting a statewide cap-and-trade program without an express delegation of authority from the Legislature.

And when the Legislature does act, the Legal Center will step in to ensure that courts interpret laws as

intended. For instance, we recently joined two cases in North Carolina's appellate courts in order to defend critically important workers' compensation reforms enacted by the state legislature. The NFIB Small Business Legal Center and other business groups say that a lower court decision correctly interpreted the statute that appropriately limits lifetime benefits, thereby managing costs for small businesses.

Your support has been crucial to our victories this year and will be instrumental in our work in 2023 as well. Thank you, again, on behalf of NFIB, the Small Business Legal Center, and entrepreneurs everywhere!

Sincerely,

Elizabeth Milito

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Every Dollar Counts - A Small Business Owner's Guide for Collecting Debts

In the Legal Center's September webinar, Cliff Ennico joined Beth Milito to discuss strategies for small businesses on how to best collect on customers' debts as well as customers' credit issues. Ennico is an attorney and nationally recognized legal and financial expert on issues facing startup and small business.

"Sooner or later, you're going to have a debt collection issue with any small business that you have. When it happens, you have three goals. Keep them to an absolute minimum, keep small receivables from becoming bigger ones, and treat problem clients ruthlessly," Ennico said.

Ennico advised to get payments upfront from clients and stop working or holding back products once a bill becomes overdue.

According to Ennico, the four steps of collecting overdue debt are:

1. Make a demand for payment
2. Try to negotiate a solution
3. Mediate/arbitrate if you can
4. Sue in small claims court

There are ways to warn other businesses about offering credit to a debtor that has not paid back their debts. "I know how much this hurts when someone does this to you," Ennico said. "You want to give them a reputation that will prevent other people from making the same mistake you did in dealing with them. Historically, the Better Business Bureau is one place that you can go to, and there are other local organizations."

For those who want to share their experiences to protect other lenders, it is important to be cautious. "Everything you say has to be 100% factually accurate," Ennico explained. "You cannot let your emotions get in the way here. If everything you say is not 100% factually accurate, you are actually opening the door to your debtor to sue you for defamation, libel, and slander."

Throughout the webinar Ennico also discussed contracts, debt forgiveness, when to use a collection agency, and knowing when to cut your losses.

The NFIB Small Business Legal Center offers a monthly webinar on the first Wednesday of each month at 12 pm EST. All webinars are recorded and available to watch on-demand at NFIB.com/webinars.

Everything You Need to Know About the SBLC's NEW Member Outreach Coordinator

Running a business can be overwhelming. Fortunately the NFIB Small Business Legal Center is here to help. While we have always been happy to answer your questions, we are excited to announce that we have added a dedicated Member Outreach Coordinator to assist small business owners on a daily basis, ensuring you get the help you need and get the help fast. This position is part of the Legal Center's commitment to being the preeminent legal resource for small business owners nationwide with its dedicated Member SupportLine.

This critical position will be the point of contact for NFIB members and small businesses on the day-to-day issues affecting your business, in areas from HR and compliance to taxes, immigration, health and safety and much more. Your problems aren't always glamorous, but that's okay. We are dedicated to assisting small businesses and helping you save time and money. We encourage you to contact us as often as you need our help.

We assist thousands of business owners every year on a wide variety of issues. So give us a call or email if you have a question. We can't wait to hear from you!

Info@nfib.org or 800-NFIB-NOW

Meet
**William
Klepp**
Legal Center Member
Outreach Coordinator



William (Will) Klepp is excited to serve as the SBLC's first Member Outreach Coordinator. Will is a graduate of Flagler College, in St. Augustine, Florida. Will honed his outstanding customer service skills working in Senator Marco Rubio's Jacksonville district office and as a tour guide for a small craft distillery. Will looks forward to answering your inquiry.

You can reach Will directly at
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