

GET TO KNOW BDO

FRANCHISING PRACTICE

► WHY BDO

BDO is committed to exceptional client service delivered through long-term, responsive relationships. It's our people, the knowledge they bring to engagements, their commitment to service, and open communications that have made BDO the distinct choice for clients of all types and sizes.

A Unique Combination

- Personal involvement and the attentiveness of a trusted advisor
- Deep resources of an established national and international network
- Local distinctiveness and client relationships

Right Size and Experience

- Streamlined, accessible organizational structure
- Fewer conflicts and hierarchies than those inherent in larger firms

Active Involvement of Senior Professionals

- Excellent staff-to-partner ratio
- Access to experienced national and international technical and industry service teams

Proactive, Ongoing Involvement

- Swift responsiveness and personalized, service-oriented philosophy
- Open, candid, constructive communication
- Strong internal collaboration designed to provide integrated service delivery

We Know Your Industry

- Dedicated national and international Franchising practice
- Thought leadership and proprietary research on issues facing the Franchising industry
- Demonstrated industry-specific experience that can be critical to your success

► BREADTH OF EXPERIENCE

Successful franchise systems are often based on a consistent approach toward business processes, compliance, and operational and financial controls. BDO, a leader in franchise accounting, provides a broad suite of integrated services to franchisors and franchisees. We know that to serve an industry you must first understand that industry; and BDO knows Franchising.

Our tailored services to the Franchising industry include:

- Audit and Accounting Services
- Accounting method review
- Cost segregation
- Employee stock option plan consulting
- E&P study
- ERISA compliance
- Executive compensation and benefit planning
- Management of net operating losses
- Mergers and acquisitions consultation
- Multi-state tax planning
- R&D credit study
- Research & development credits
- Royalty Audits
- S to C Corp issues
- Sales and use tax planning
- Section 199 – Production activity analysis
- Section 338 step-ups

- Transaction cost analysis
- Transfer pricing
- Trusts
- Valuation Services

Representative Franchising Clients:

- Boston Pizza Restaurants
- BrightStar
- The Dwyer Group
- East Coast Wings & Grill
- Global Franchise Group
- Kahala Franchising
- Lawn Doctor
- Nestlé Café
- Senior Helpers
- Sun Holdings
- Toni & Guy
- Winzer

BDO USA, LLP

For more than 100 years, BDO has been recognized as a premier accounting, tax and consulting organization for our exceptional client service; experienced, accessible service teams; focus on quality and efficiency; and our ability to adapt to, and navigate successfully in, a changing marketplace.

\$683 million Revenues

60% Accounting & Auditing 30% Tax 10% Consulting, Corp. Fin., Other

3,248 Total Personnel 305 Partners 52 Offices 2,644 Professional Personnel

400+ Independent Alliance firm locations nationwide

U.S. financial and personnel statistics as of and for the year ended 6/30/13.

Our International Reach

BDO is a network focused on relationships, not only with our clients but also among our member firms, partners and professionals. BDO International's Franchising group, comprised of BDO member firms from 144 different countries, understands the importance of oil and gas as a market niche. Our international team meets on a regular basis to discuss industry development, working together to deliver consistent, quality service to our clients and to share knowledge regarding issues of importance to the industry. Our clients can rest assured that wherever our Franchising clients are in the world, BDO delivers the services and capabilities of the fifth largest global accounting and consulting network.

56,389 Total Personnel **5th** largest accountancy network in the world

1,264 Offices in 144 countries

4,908 Partners 48,369 Professional Personnel

\$6.45 billion Revenues

59% Accounting & Auditing 20% Tax 21% Consulting, Corp. Fin., Other

International statistics as of and for the year ending 9/30/13.

► INDUSTRY THOUGHT LEADERS

BDO has been a valued business advisor to franchisors and franchisees for more than 100 years. BDO understands the complex nature of the franchising industry from both the franchisor and franchisee perspective and has the right mix of firsthand experience to help you plan and implement organizational and financial strategies for future success. And, when you need guidance on complex matters like royalty audits, employee stock options or M&A activity, our professionals provide guidance through partner-led client service teams, direct access to technical leaders and the resources of our global network in more than 100 countries.

BDO's Franchising practice places a strong emphasis on understanding industry trends and their implications for franchisors, franchisees, retail and consumer products companies.

We publish a variety of knowledge resources, including:

- **BDO RiskFactor Report**, an annual benchmarking and analysis of the risk factors identified by major public retail and consumer product businesses
- **BDO Retail Compass Surveys**, periodic surveys of C-level industry executives on timely topics affecting their business
- **Consumer Business Compass Blog**, a real-time look at the top trends and business issues impacting the retail, consumer and franchising industries (<https://blog.bdo.com>)



► CONTACT US

Our Franchising practice consists of an experienced network of professionals who possess the business and technical knowledge to deliver a variety of quality services to franchisors and franchisees. Plus, our excellent staff-to-partner ratio affords our clients continuous access to experienced service teams.

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BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For more than 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. The firm serves clients through 49 offices and over 400 independent alliance firm locations nationwide. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,264 offices in 144 countries.

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www.bdo.com
www.bdo-international.com

People who know Franchising, know BDO.

Want to hear what's going on in the Franchising Industry?

Keep up with industry hot topics by following us on Twitter **@BDOConsumer**



Go to www.bdo.com/retail to learn more.



Kate O'Neill, founder and CEO of KO Insights, is a speaker, author, and consultant focused on topics at the intersection of data, humanity, and meaningful experiences. Kate's prior experience includes founding digital strategy and analytics firm [meta]marketer, creating the first content management role at Netflix, leading cutting-edge online optimization work at Magazines.com, developing Toshiba America's first intranet, building the first website at the University of

Illinois at Chicago, and holding leadership positions in a variety of digital content and technology start-ups.

Kate has been featured in CNN Money, TIME, Forbes, USA Today, and other national media. She writes a business column for The Tennessean, contributes regularly to a variety of online outlets including CMO.com, and is the author of an upcoming book on meaningfulness in marketing. Kate is a vocal and visible advocate for women in technology, entrepreneurship, and leadership — she was featured by Google in their global campaign for women in entrepreneurship — as well as for Nashville as a growing tech center.

For more information, go to www.koinsights.com



FRANCHISOR TOOLKIT

Franchisors face a blizzard of paperwork in offering, selling and documenting a franchise. Mitigated Risks' Franchisor Toolkit automates the key functions in compliance, communication and contract processing, giving you an easy way to track your transaction, create documents that meet compliance standards, and to assure that your records will comply with regulatory requirements while they meet your business needs. That way, your management team can be confident in your administrative process so you can focus on meeting the demands of expanding and managing your franchise system.

Mitigated Risks LLC is a wholly-owned subsidiary of the Baker Donelson law firm offering training and compliance services and support. The web-based Franchisor Toolkit was developed to leverage Baker Donelson's extensive experience working with franchisors. It gives you an easy-to-use, cost-efficient way to automate your document production and record-keeping as well as organize and store all the documents related to each franchise transaction as they are created. The system links all related files in an easy-to-access and shareable environment. No matter where your team members reside or work, your key documents are available in a virtual world, for instant review in a password-controlled access system, from any computer with internet access.

The Franchisor Tool Kit requires no investment in hardware or software, resides on our secure servers, encrypts documents in transit, is customized for your work flow, shares files with your CRM and other applications seamlessly, and enhances productivity through automation, division of labor and reduced data reentry.

Acting as your "virtual" franchise administration resource, the Franchisor Toolkit will help you:

- Track and maintain state filing disclosure documents and Item 23 receipts
- Access real-time updates on registration status and maps of go/no go states
- Create, store, track and quickly retrieve transaction documents and franchise forms
- Avoid missing important compliance deadlines (through email reminders)
- Reduce the cost of document assembly and production in the event of litigation or sale
- Avoid the surprise of a forgotten document that affects the outcome of a dispute or a decision

Whether you are an established, large-scale franchisor, a mid-sized brand hitting a growth spurt, or a start-up concern, our Franchisor Toolkit is scalable to meet your unique needs and can free up management, IT and legal teams from administrative drudgery. Multi-system franchisors and owners can standardize the process, so all systems use the same platform.

If you're interested in learning more about how the Franchisor Toolkit can simplify your compliance world, contact Joel Buckberg for a demonstration.



Joel Buckberg

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www.mitigatedrisks.com

Mitigated Risks LLC is a wholly-owned subsidiary of Baker Donelson providing compliance resources and advanced online training products to companies of all sizes.

NLRB JOINT EMPLOYER STATUS

In July, the National Labor Relations Board (NLRB) Division of Advice announced that a franchisor could be designated as a joint employer of its franchisees employees. IFA is fighting this dangerous assertion because it is unlawful and will harm job growth, the economy and locally-owned franchise small businesses in every state.

Franchisees have been an important driver of the economic recovery since the Great Recession, growing faster than non-franchise businesses during this period. More than 770,000 franchise businesses operate in over 100 different business categories such as restaurants, hotels, business services, retail stores, real estate agencies and automotive centers. Franchise businesses employ more than 8 million workers and contribute roughly \$494 billion to the U.S. Gross Domestic Product, or 3.1% of total private sector GDP.

The Service Employees International Union (SEIU) is leading organized attacks against franchising. This well-financed, national campaign against franchising by SEIU is a desperate, special-interest ploy to replenish the union's dwindling coffers and membership. The labor unions multi-pronged attack at the local, state and national levels include having the federal government declare entire franchise systems as a single unit rather than the collection of separate, small business owners they actually are. The SEIU wants to undermine the franchise business model so it can more easily unionize entire franchise systems, as it is much more difficult for unions to organize thousands of independent small businesses under the current regulatory system.

Key Points:

- The NLRB Division of Advice ignored decades of regulatory, legal and legislative precedent that make it clear franchisees are separate businesses from their franchisors. Their legally binding contracts also make this clear.
- A franchise is an agreement or license between two independent businesses. Many franchise businesses with familiar brand names are actually locally-owned and operated small businesses that pay an initial fee and ongoing royalties to use the trademarks of the franchisor.
- Franchisors are responsible for brand standards and quality, while franchisees are responsible for day-to-day operations and employment decisions that include hiring, firing, wages and benefits, and working conditions.
- Franchisees have invested their capital in the business and stand to lose equity in their businesses if their franchisors are deemed joint employers.
- Disputes over liability will only produce costly litigation for both the franchisee and franchisor.

THE ASK: “Will you sign a letter to the NLRB’s General Counsel, asking for the rationale and the relevant facts considered to make the determination that McDonald’s can be a joint employer with its franchisees?”



The NLRB General Counsel's Proposed Change in the "Joint Employer" Standard:

What It Means for the Franchise Industry

| BEFORE Old (Current) Joint Employer Standard | AFTER New (Proposed) Joint Employer Standard |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Franchise businesses are joint employers only when they share "direct and immediate" control over matters governing the essential terms and conditions of employment. • Focus is on terms and conditions of employment including hiring, firing, discipline, supervision and direction. | <ul style="list-style-type: none"> • Franchise businesses would be joint employers whenever the franchisor exercises "indirect control" over the franchisee. This broad provision could make virtually all franchisors and franchisees joint employers. • Focus would be on "industrial realities" that make the franchisor a necessary party to meaningful collective bargaining • Joint employer status may be found even though the franchisor plays no role in hiring, firing, or directing the franchisee's employees. |
| <p>Factors indicating direct control (currently):</p> <ul style="list-style-type: none"> • Detailed control of employees' daily activities by franchisor's supervisors • Franchisor authority to discipline and discharge franchisee's employees • Franchisor hiring or rejection of certain franchisee employees • Franchisor making labor relations decisions for both companies • Fee arrangements that are tied primarily to labor costs | <p>Factors indicating indirect control (according to NLRB's GC):</p> <ul style="list-style-type: none"> • Franchisor monitors operational procedures of franchisee employees • Franchisee employees wear franchisor uniforms • Franchisee employees follow franchisor reporting and documentation requirements • Franchisor conducts training of franchisee employees • Services provided under Franchise agreement are franchisee's sole business • Franchisor meets with franchisee suppliers • Employees and supervisors transfer between franchisor's and franchisee's locations • Franchisor sets price of goods sold • Franchisor sets speed and frequency of franchisee employee tasks • Franchisor determines equipment franchisee employees use and how |

FAQ's: WHY IT MATTERS AND WHAT TO DO NOW

If the NLRB General Counsel succeeds in changing the joint employer standard, how will that affect traditional franchise businesses?

- When joint employer status is established, both entities may be liable for the other's unfair labor practices, including unlawful discipline or discharge of employees under the National Labor Relations Act.
- A new joint employer standard may make it easier for unions to organize multiple franchisees of a single franchisor.
- A new joint employer standard will increase the likelihood of union "corporate campaign" tactics against national franchisors, in order to pressure franchisees.
- A new joint employer rule could impose new bargaining obligations on franchisors and could also give unions the right to strike or picket at any franchise system location, not just the location where a dispute arises.
- Faced with potential liability for their franchisees' employment decisions, franchisors may be forced to exercise operational control over all the employment and human resource decisions of franchisees, undermining the franchise business model.

WHAT SHOULD FRANCHISORS AND FRANCHISEES DO NOW?



A Strategic Initiative of the International Franchise Association

Right now, the old joint employer standard continues to be the law. It is up to the five members of the NLRB itself to make any official change. But the General Counsel's decision to issue a complaint against one of the country's leading franchisors should serve as a "wake up call" for all franchise businesses. At a minimum, franchise businesses should monitor this situation closely through organizations like the IFA. Here are some other suggested action items:

- Audit franchise practices to minimize factors showing "indirect control" over employee working conditions in the franchisor/franchisee relationship, where possible.
- Review franchise agreements to be sure they expressly give franchisees control over their employees' terms and conditions of employment.
- Limit exposure of franchisee employees to franchisor representatives. Franchisor managers should primarily interact only with the franchisee's managers.
- Monitor NLRB rulings for the latest directives provided by the agency.
- Speak out! Through the International Franchise Association's Franchise Action Network program to help make the case against changing the joint employer standard at the NLRB and in Congress.

Timeline of Joint Employer announcement:

- David Weil issues Fissured Industries announcing the attack on the model. Weil appointed as DOL Wage & Hour Chief in 2014 on party-line vote in Senate.
- In 2013, multiple Unfair Labor Practice charges (ULPs) are filed against MCD and franchisees in New York and Chicago and elsewhere alleging joint employment.
- In November 2013, regions investigate the claims and send to Division of Advice as to how to proceed.
- On April 30, 2014, the NLRB invited amicus briefs on whether the Board should adopt a new joint-employer standard in Browning-Ferris Industries. The case addresses whether Browning-Ferris (a non-franchise waste management company) should be considered a joint employer with Leadpoint, a staffing services company, in a union representation election. The Board's current standard deems businesses joint employers only when they share direct and immediate control over essential terms and conditions of employment including hiring, firing, discipline, supervision and direction.
 - On June 26th, Richard Griffin, NLRB General Counsel, filed his amicus brief in the Browning Ferris case, which may well illuminate the underlying rationale behind the complaints issued against McDonald's naming them as joint employers. There, the General Counsel asserts that the Board should abandon its "narrow" joint-employer standard and "return" to the broader "traditional" approach. Mr. Griffin believes companies may effectively control wages by controlling other variables in the business. He moves the analysis away from day-to-day control over employment conditions to operational control at the system-wide level. He would find joint employment based on direct control, indirect control, potential control and when "industrial realities" make the company a necessary party to meaningful collective bargaining.
 - In response to Griffin's amicus, IFA submitted an amicus brief, arguing against applying the broader indirect control and industrial realities test to franchise companies due to the negative economic consequences this would have on small business franchisees.
- July 29 – NLRB General Counsel announced it was issuing complaints against McDonald's franchisees and their franchisor, McDonald's, USA, LLC, alleging that they violated the rights of employees. The General Counsel announced that 181 cases had been filed since November 2012. 68 cases were found to have no merit, 64 cases were still pending investigation, and 43 cases were found to have merit and a complaint was authorized.
- Between July 29 and Dec. 19 - Additional charges were filed, bringing the total number of cases to 291 since November 2012.
- Dec. 19 – The General Counsel issued formal complaints against McDonald's franchisees and their franchisor, McDonald's USA, LLC, as joint employers. Of the 291 charges filed since November 2012, 86 cases have been found meritorious and complaints will issue on those cases. 11 cases were resolved and 71 cases remain

under investigation.

- Given these numbers, it appears that 123 cases have been dismissed, but the Board did not announce the total number. (86 complaints were authorized, 11 cases “resolved” or settled, and 71 are currently under investigation – $291 - 168 = 123$).

Next Steps regarding McDonald’s complaints:

- So far, the General Counsel issued 13 complaints involving 78 charges. More complaints will issue. The NLRB consolidated hearings in three Regional locations in the Northeast, Midwest and West.
- The initial litigation will begin [on March 30, 2015](#) in Manhattan. Subsequent hearings will be held in Chicago and Los Angeles. The Board has not scheduled many of the hearings, perhaps because it hopes that litigation will not be necessary after litigation in the initial cases.
- After the initial litigation in front of the Administrative Law Judge (ALJ), the parties will file briefs and the ALJ will issue a proposed decision.
- That decision may be appealed to the NLRB in Washington D.C.
- During the appeal, interest parties may file a motion to file Amicus briefs.
- The Board’s decision is subject to appeal to federal district court where the unfair labor practice occurred, or in the District of Columbia.
- Interested parties may again request to file Amicus briefs at this stage. Ultimately, the case may be appealed to the U.S. Supreme Court. The Board may enforce its decision during the appeal process or may choose to stay its decision on appeal or the appeals court may issue a stay, if requested. This process will take years.