

# NLRB Chairman Fires Back at Request to Withdraw Notice of Proposed Rulemaking on Joint Employment

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John Ring, NLRB Chairman, has sent a five-page letter to several members of Congress in response to their request for the NLRB to withdraw its Notice of Proposed Rulemaking on the joint-employer standard.

In the January 17, 2019 letter recently released to the public, the Board Chairman spent considerable time defending the Board's position and clarifying a recent appellate decision in *Browning-Ferris* by the D.C. Circuit. For a detailed description of the decision, please see [Joint Employment under NLRA: Interpreting D.C. Circuit Court's \*Browning-Ferris\*](#). The Chairman stressed the need for more clarity in this area of the law and that determining joint-employer status continues to be one of the most difficult and debated subjects in labor law.

In support of his position, the Chairman stated that the Board has received more than 26,000 comments in response to the NPRM with two weeks remaining for additional comments at the time he prepared the letter. Ring further stressed that nothing in the D.C. Circuit's decision "forecloses" the Board's joint-employer rulemaking or otherwise requires the Board to suspend or withdraw its NPRM. He quoted various aspects of the D.C. Circuit's decision in an effort to clarify the Court's ruling and correct the interpretation articulated by several members of Congress. Ring remained steadfast in the decision to use the NPRM to obtain clarity and direction in formulating the final rule. He concluded as follows:

For all of these reasons, a majority of the Board continues to believe that Notice-and-Comment rulemaking offers the best vehicle to address the uncertainty surrounding the joint employer standard. Rulemaking provides an opportunity for input by tens of thousands of public commenters, including those who may not be able to afford an attorney to participate in our case adjudication process. Withdrawing the NPRM at this time certainly would be unfair to the thousands of individuals and groups that have expressed such a strong desire to be heard on this important topic.

In light of the recent D.C. Circuit Court's decision, the Board extended the comment period deadline

from January 14 to January 28, 2019, to provide an opportunity for the public to weigh in following the decision.

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