The Daily Dish

The Joint Employer Rule

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The Environmental Protection Agency (EPA) announced this week that they will delay the Obama Administration's air pollution rule by a year. The EPA said that they will decide by October 2018 which areas are out of compliance with the ozone rule. EPA Administrator Scott Pruitt said that under the Clean Air Act the EPA is able to delay a rule up to a year if they have "insufficient information."

On Tuesday the House Budget Committee announced that the House will not be required to vote again on the American Health Care Act (AHCA) before the bill can move onto the Senate. The Budget Committee decided that the May 4th vote in the House is in compliance with the Senate's reconciliation process. While the House bill may be moving onto the Senate, the Senate has maintained that they will be writing their own bill.

Eakinomics: The Joint Employer Rule

Yesterday the Department of Labor announced that it was reversing course on the Obama Labor Department's decision to expand the "joint employer" doctrine — essentially the circumstances in which one company can be held liable for employment law compliance in another company. The joint employer world was turned upside down in 2015 when the National Labor Relations Board (NLRB) ruled that Houston-based Browning-Ferris was responsible for the treatment of employees from Leadpoint Business Services that had been hired to staff a recycling facility in California. The ruling meant that a company can more easily be pulled into a contractor's collective bargaining negotiations and be held liable for a contractor's labor law violations as well.

In the aftermath of the NLRB decision, then-Secretary Tom Perez announced that the Department of Labor would abandon its standard that joint employer only applied if a company had "direct control" over the other's workplace in favor of an ambiguous "direct or indirect control" standard. Yesterday's announcement reverses Perez's decision.

This is a relief for the business community, and franchises in particular. There are over 770,000 U.S. franchises that employ over 8.5 million workers. Usually the strength of franchising is the value of the brand, and franchises set standards to ensure quality and, thus, protect and enhance the brands. Franchisees determine who to hire and fire, wage rates and benefits, and work schedules. The new joint employer standard would mean that franchisees lose their independence and the franchisors' heavy monitoring, control and negotiating costs would likely slow the growth of franchises and their employment.

While this is good news, it does not reverse the NLRB's ruling in the Browning-Ferris case. A complete reversal of the Obama-era overreach awaits either a potential Appeals Court ruling to repeal the new standard, the opportunity for another case to reach the NLRB and provide the opportunity to revisit the standard, or a new law from Congress that returns joint employer to the previous standard.