



AGC
THE CONSTRUCTION
ASSOCIATION

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February 28, 2024

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

AGC KEY VOTE: VOTE “YES” ON H.J. RES. 98

Dear Majority Leader Schumer and Leader McConnell,

On behalf of the Associated General Contractors of America (AGC) – representing over 27,000 construction firms in every state – **I urge you and your colleagues to vote “YES” on the H.J. Res. 98** providing for congressional disapproval of the of the rule submitted by the National Labor Relations Board relating to a “Standard for Determining Joint Employer Status.” A “joint employer” finding is significant. Companies that are joint employers may be held jointly responsible for legal compliance and collective bargaining obligations related to the jointly employed workers, which is a major concern to AGC. **AGC will record this vote as a KEY VOTE for the education of its members.**

The standard currently in place allows a finding of joint employer status only when a company *actually exercises substantial direct and immediate* control over essential terms and conditions of employment of the direct employer’s employees. The new standard allows a joint employer finding not only when the company actually exercises substantial direct control but also (a) when a company actually exercises control over essential terms and conditions of employment *indirectly* through someone else, as well as (b) when a company merely possesses the *authority to control*, directly or indirectly, essential terms and conditions of employment of the other company’s employees.

Joint employer changes can disrupt long-standing standards in labor law and potentially change the way the construction industry operates in detrimental ways. The change could also have a particularly destabilizing impact on well-settled subcontracting practices in the construction industry, where critical issues such as safety and scheduling often dictate that a contractor have some say in how its subcontractors’ employees behave and have some oversight in their terms and conditions of employment. Small businesses are the most vulnerable because they are less likely to have the legal advice, staff time, or bargaining power to structure business arrangements that minimize their risk of inadvertently becoming a “joint employer” under the new standard.

Senators must vote “YES” on H.J. Res. 98 and restore the standard to one where two or more employers have “actual, direct, and immediate” control over employees to be considered joint employers.

Sincerely,

James V. Christianson
Vice President, Government Relations