

# 2025 LEGAL UPDATE



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# Overview

- Federal Regulatory Updates:
  - FTC Federal Rule
  - SBA Franchise Registry
- State law updates
- Corporate Transparency Act
- Joint Employer Update



# Rule-Making Updates: FTC Rule

## Executive Order: “10 Out, 1 In” and Impact on FTC Franchise Rule

- In January 2025, President Trump signed a new executive order requiring agencies to eliminate 10 regulations for every new one introduced
- Builds on 2017’s “2 out, 1 in” policy to further limit regulatory expansion
- Applies to all federal agencies, including the Federal Trade Commission (FTC)
- At the IFA’s Legal Symposium, the Director of the FTC’s Bureau of Consumer Protection indicated that due to the new executive order, it is unlikely the FTC will pursue a revamp of the FTC’s Franchise Rule during this administration



# Rule-Making Updates:

## Item 6 (Fees) Guidance

- The FTC's 2023 Request for Information ("RFI")
- The FTC re-opened the RFI in 2024: Responses to the RFI led to a focus on new or increased fees in Item 6
- Item 6 requires the disclosure of all fees paid to franchisor or its affiliates
- Footnote 3 to Item 6 says: "If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase."
- Registration states began focusing on compliance with Footnote 3 in 2024 and 2025, including flagging any reservation of rights to increase or add fees in the future



# Rule-Making Updates:

## Item 6 (Fees) State Guidance

- May a franchisor impose fees through its operations manual or otherwise that were not disclosed in the Franchise Disclosure Document?
- CA Department of Financial Protection and Innovation (DFPI) FAQ:  
*A: “No. CA and federal law both require the franchisor to disclose all fees, including prospective fees, to a prospective franchisee in the Franchise Disclosure Document (“FDD”) before the franchise agreement is signed or the receipt of any payment by the franchisor or any of its affiliates in connection with the proposed franchise sale.”*
- WA Franchise Act Interpretive Statement - FIS-09  
*A: “Because the operations manual is typically only provided after the franchise agreement is executed, the imposition of fees in the operations manual that were not disclosed in the FDD prior to the execution of the franchise agreement, or any payment to the franchisor or an affiliate in connection with the proposed franchise sale, violates both state and federal law.”*





# Rule-Making Updates:

## Item 6 (Fees) Practical Guidance

- Problematic Examples:
  - Pass-Thru Expenses such as Tech Fees
  - Franchisors providing services previously contemplated by third parties (example, digital, loyalty, POS real estate/construction support)
- Practical Solutions:
  - Include “formulas” that contemplate a pass through of actual cost
  - Make your “max” a year over year percentage increase
  - Tie it to an obligation that the franchisee is already required to pay (Item 11)
  - Ensure the charge is not more than what the franchisee would pay a 3<sup>rd</sup> party
  - Give franchisees the option of purchasing the produce or service elsewhere
  - Work with NACs, franchisee buy-in, sell it.
- *Bores v. Domino's Pizza*, 530 F.3d 671, 675 (8<sup>th</sup> Cir. 2008)



# Rule-Making Updates: SBA

## SBA Franchise Directory – Return & Key Features

**Originally Launched in 2018**, the SBA Franchise Directory simplified loan processing and helped lenders assess franchise loan eligibility; it was discontinued in 2023.

**Reinstatement Effective June 1, 2025**, with several key updates:

- **No SBA Addendum Required** – Franchisors now certify compliance via a written statement.
  - Addendum changes certain terms primarily related to transfers, step-in rights and lease assignments to ensure compliance with SBA regs.
  - Need to still track which franchisees have SBA loans
- **Simplified Application** – Submit FDD and related documents to [franchise@sba.gov](mailto:franchise@sba.gov).
- **Expanded Eligibility** – Non-traditional franchise models may qualify.
- **Free Inclusion** – No cost for franchisors to be listed.



# Rule-Making Updates: SBA

## SBA Franchise Directory – Certification and Deadline

### Franchisors Previously Listed:

- Must submit **signed certification** by **July 31, 2025** to remain eligible.

### New Applicants:

- Must meet eligibility criteria and apply through the SBA.
- SBA may reject models not meeting restored SOP rules.

### Certifications:

- Certification is a one-time acknowledgment, not needed per loan.
- After deadline, only fully certified brands will remain on the Directory and eligible for SBA-backed financing.





# Rule-Making Updates: State Laws

## Franchise Disclosure Laws

### California SB919 (Effective July 2025)

- Imposes a registration requirement on franchise brokers, similar to Washington and New York
- Requires franchise brokers to prepare and file a disclosure document, including:
  - Role of the franchise broker
  - Contact information for franchisees sold to in the last year
  - Number of clients in each industry the broker sells franchises
  - Relevant litigation history
  - How the franchise broker is or may be compensated
- Prospective franchisees must receive the disclosure document



# Rule-Making Updates: State Laws

## Franchise Disclosure Laws

### California SB919 (Effective July 2025)

- Allows California to revoke franchise broker's right to sell
- Creates a cause of action for the franchisee against the franchise broker for damages
- Creates a cause of action for the franchisee against the franchisor for rescission
- Creates a cause of action for the franchisor against the franchise broker if they are in violation of the law



# Rule-Making Updates: State Laws

## Franchise Disclosure Laws

### **Proposed NASAA Model Franchise Broker Registration Act**

- Request for Public Comment issued May 2024 and closed June 2024
- Drafted to be implemented by any state, whether or not a registration state
- Envisions a uniform broker disclosure document similar to California's requirement
- NASAA is in the process of drafting this uniform disclosure document



# Rule-Making Updates: State Laws

## Franchise Disclosure Laws

### Proposed NASAA Model Franchise Broker Registration Act

- Expansive definition of franchise broker, including anyone who is paid to identify candidates, evaluate candidates, etc.
- Unlawful for a franchisor to use a broker who is not registered
- A franchisor must file a notice identifying any brokers to be used
- Proposes experience standards or competency exams prior to being registered as a broker
- Proposes franchise brokers meet certain financial and insurance requirements prior to being registered



# Corporate Transparency Act

## Current Status (May 2025)

- **Domestic Entities Exempted:** As of March 21, 2025, the Financial Crimes Enforcement Network (FinCEN) issued an interim final rule removing the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) under the CTA.
- **Revised Definition of Reporting Company:** The term "reporting company" now applies only to entities formed under foreign law and registered to do business in the U.S.
- **Suspension of Enforcement:** The U.S. Department of the Treasury announced it will not enforce any penalties or fines associated with BOI reporting requirements for U.S. citizens and domestic companies.



# Joint Employment:

- Franchisor is de facto employer of the **franchisee's employees**.
- Often used to make non-employers, like franchisors, liable for wage law violations.
- Unionization component: in NLRB context, joint employment is a mechanism to bring non-employer parties, like franchisors, into labor negotiations.
- Can also be used to create general vicarious liability – merges into agency theory.



# *G.M. v. Choice Hotels Int'l, Inc.,* 725 F. Supp. 3d 766, 784 (S.D. Ohio 2024)

- Case brought under the Trafficking Victims Protection Reauthorization Act (“TVPRA”).
- Alleged hotel franchisor profited from sex trafficking.
- Claims typically turn on franchisor’s control over franchisee’s employment policies.
- Joint employment theory failed as plaintiff only alleged franchisor-controlled employee training, not other employment-related policies, like hiring, retention, scheduling, and pay rates.

# Coryell v. Morris, 330 A.3d 1270 (Pa. Super. 2025)

- Domino's delivery driver injured a motorcyclist while delivering pizzas.
- Claim was analyzed under traditional agency law, based on control provisions in FA.
- Domino's argued the control provisions in its FA only protected brand standards.
- Jury found against Domino's.
- Appellate court held that there was sufficient evidence to support agency liability.
  - Evidence did cover details of employee control.
  - But it did NOT go specifically to control over driver safety.

# What do these cases mean?

- Be wary of franchise terms that specify more than is necessary to enforce brand standards.
- Be particularly wary of franchise terms that address acts, like employment policies, that might trigger liability.

# Independent Contractor Misclassification:

- Franchisor is de facto employer of the **franchisee**.
- Typically used to assess employment law liability (overtime, worker's comp, etc.) against franchisor.
- Also used to invalidate franchise fees.
- Plaintiff is typically disaffected franchisee, often suing as a class representative.

# Patel v. 7-Eleven, 494 Mass. 562 (2024)

- Class action in which plaintiff franchisees claimed they were 7-Eleven's employees.
- Involves the ABC test for employment classification.
- Test presumes employment relationship if contractor:
  - (a) Is controlled and directed by contracting party, or
  - (b) Is in the same usual course of business as contractor, or
  - (c) Does not operate an independent business
- Prongs A & B are difficult for franchisors to satisfy.

# The ABC Test Threshold Inquiry

- All variants of ABC test have a threshold inquiry that limits test's scope.
- Massachusetts threshold inquiry was “provision of a service.”
- Contractor had to provide service to putative employer for test to apply.
- Franchisees argued compliance with franchise agreement was a service to 7-Eleven.
- 7-Eleven argued franchisees didn't provide a service to franchisees.
- 7-Eleven did not pay its franchisees.
- 7-Eleven provided services to franchisees in exchange for payment – a fee.



# SJC sided with 7-Eleven

Held a “service” required either:

- Payment by the putative employer to the contractor (which 7-Eleven did not make), or
- The contractor providing a service to the putative employer’s own customers (which 7-Eleven’s franchisees did not do)

# What does this mean?

Be wary of:

- Franchise arrangements where the franchisor makes payments to the franchisee that resemble a wage.
- Franchise arrangements where the franchisor holds the customer relationship and uses franchisees to service them.

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## Questions?

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