

WHAT IS A FRANCHISE?

Essentially a franchise is a business expansion model where a business owner (“franchisor”) licenses its name and business model to another party (“franchisee”) who becomes an owner of its own business subject to the assistance, controls and restrictions of the franchisor.

Under federal law a franchise relationship exists if 3 factors are present:

1. The license of a trademark. The franchisee is given the right to market and/or sell products or services under the franchisor’s trademark, logo, or commercial symbol.
2. Significant control or assistance. The franchisor maintains significant control over the franchisee’s business or provides significant assistance to the franchisee in the operation of the franchisee’s business. Examples of such control or assistance are:
 - a. Restrictions on products or services to be sold
 - b. The provision of training to the franchisee
 - c. Site selection assistance
 - d. Required hours of operation
 - e. Employee hiring assistance
 - f. Required advertising or promotional programs
 - g. Store design or appearance requirements
3. Required Payment. For the trademark license and the assistance discussed above, the franchisee makes payment to franchisor in an amount of at least \$500. Payment includes any license fees, royalty fees, training fees and other payments for products and services.

Note that if these 3 factors exist, then the relationship is subject to federal franchise laws regardless of whether the parties intended to create a franchise. Keep in mind that there are also state laws which define “franchise.” These state laws may not be more narrow than the federal laws- in other words, if federal law says it’s a franchise, then it’s a franchise regardless of state law. However state law can define “franchise” more broadly to include relationships that would not otherwise be considered franchises under Federal law. There are also state business opportunity laws which may be applicable to your offering even if it is not considered a franchise.