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A MIXED BAG ON JOINT EMPLOYMENT RULINGS, BUT THE FUTURE LOOKS PROMISING (PART I OF II)

In the restaurant industry, it's pretty common for fast food and sandwich shop operators—think Wendy's, Chick-fil-A, Subway, etc.—to run their companies based on a franchise model. Under this model, which is somewhat analogous to a large corporation that has a main "corporate office" and satellite locations scattered around the country, the ***franchisor*** owns the brand, sets brand standards, decides food offerings and maps out big picture strategy. (To help keep things simple and avoid confusion over the franchisor and franchisee distinction in this blog post, we'll refer to the franchisor as the "corporate office.")

The ***franchisees***, for their part, pay money to the corporate office, and, in exchange, they receive various operational benefits from the corporate office—e.g., licensing rights, national advertising campaigns run by the corporate office, necessary equipment, supplies to set up shop and run day-to-day operations, etc.

Recently, there were two different rulings issued in connection with lawsuits filed by franchisee employees. The employees alleged that their federal rights had been violated, not just by the franchisee employer but also by the corporate office under a *joint employment* theory. We'll address one of the rulings in this blog post and the second ruling in next week's blog post.

JOINT EMPLOYMENT—A QUICK REFRESHER

We've previously blogged about joint employment issues in January 2016 and July 2018. As a quick refresher, joint employment is an employment law theory that involves an employee who works for two ***separate*** companies—the joint employers—where both companies have the ability to control the terms and conditions of the employee's day-to-day work activities such that both companies are responsible for complying with various legal obligations owed to the employee (or so the argument goes from the employee's perspective).

So, for example, if an hourly (non-exempt) employee works 40 hours in a workweek for Company A and 20 hours for Company B in the same workweek, under a joint employer theory, the employee is entitled to 20 hours of overtime for that workweek. (In contrast, if there's no joint employment relationship, the employee wouldn't be entitled to any overtime because the employee didn't work in excess of 40 hours in a workweek for either employer.)

Employees will sometimes raise the joint employment argument in a lawsuit because it yields more claims to pursue in court and brings yet another party—and another pocketbook—into the lawsuit.

RULING NO. 1—NO JOINT EMPLOYMENT

In the first ruling, a sandwich company known for its speedy deliveries side-stepped joint employment liability in a wage/hour collective action lawsuit filed in an Illinois federal court by franchisee employees. The June 14, 2018 ruling issued by the court rejected the workers' claims that they were illegally misclassified under wage/hour laws as exempt from overtime and that the sandwich chain—meaning both the corporate office and the franchisees—jointly employed the franchisee employees.

More specifically, the franchisee employees alleged they were wrongly classified as overtime-exempt managers because, in reality, they spent the vast majority of their work hours executing ***nonexempt*** tasks such as making sandwiches and operating registers. They also claimed that this misclassification was the corporate office's fault because it commanded an aggressive workload. Therefore, according to the employees, both the corporate office and the franchisees were responsible for unpaid overtime.

The federal judge, however, rejected the employees' claims. The judge explained that the determination of joint employment status hinges on four factors: whether the alleged joint employers i) hire or fire another company's workers; ii) set the workers' schedules; iii) decide their rates of pay; ***and*** iv) maintain employment and personnel records of the employees.

While the workers argued that the corporate office set HR policies for franchisees and enforced the policies by way of auditors sent from the corporate office, the judge found these policies to be only guidelines and that "any control that [corporate office] does exert over the franchisees relates to brand standard, which [corporate office] is entitled to enforce."

The workers also urged the court to consider the fact that the corporate office controlled HR matters through its training requirements, dress code and day-to-day operations; as a result of these policies, the employees argued that the corporate office was effectively controlling the franchisees. The court, however, found these controls to be superficial and only a matter of the corporate office maintaining brand standards, which aren't enough to establish an employer-employee relationship.

(INTERIM) CONCLUSION

Without question, the sandwich chain dodged a huge bullet. Had the judge bought the franchisee employees' joint employment arguments, the wage/hour class of franchisee employees would likely have been certified, paving the way for the employees to band together in a class of thousands and pursue their wage/hour claims against the corporate office and innumerable franchisees in a single high stakes lawsuit.

But, with the judge's ruling, the franchisee employees will have to pursue their claims (most likely) on an individualized basis—as opposed to a class or collective action. Simply put, that mean the employees now have less leverage and have a much harder path forward in court from a logistics standpoint.

In next week's article, we'll summarize the second joint employment ruling—that one issued by the NLRB—and provide practical takeaways in light of both joint employment rulings.

Given the wage/hour issues that were at the heart of the sandwich chain litigation, don't forget to check out our wage/hour compliance program, L.Y.R.I.C., which can be found here. L.Y.R.I.C. is a password-protected microsite that's free for Hall Render clients.

If you have any questions or would like additional information about this topic or Hall Render's L.Y.R.I.C. protocol (including the password to the microsite), please contact Dana Stutzman at (317) 977-1425 or dstutzman@hallrender.com; Mary Kate Liffrig at (720) 282-2033 or mliffrig@hallrender.com; or your regular Hall Render attorney.

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