

**BLOGS**

Vicarious Liability

Court Denies Franchisor's Motion to Dismiss Labor Law Claims Premised on Joint Employer Theory

A federal district court in Pennsylvania recently denied a motion to dismiss filed by the franchisor of Friendly's restaurants in which Friendly's argued that a putative class of restaurant employees asserting violations of the Fair Labor Standards Act ("ELSA") and other state labor and wage laws had failed to plead facts sufficient to establish that Friendly's and its franchisees were joint employers. *Reed v. Friendly's Ice Cream, LLC*, 2016 WL 2736049 (M.D. Pa. May 11, 2016). To determine whether Friendly's could be considered a joint employer under the FLSA, the court applied the multi-factor Enterprise test, which includes considerations of whether the alleged joint employer had: "(1) authority to hire and fire relevant employees; (2) authority to promulgate work rules and assignments and to set conditions of employment . . . ; (3) involvement in day-to-day employee supervision . . . ; and (4) control of employee records" The court held that the employees had alleged enough facts in support of their joint employer theory to survive a motion to dismiss. Specifically, the employees had alleged that Friendly's was actively engaged in the day-to-day operations of all restaurants; set policies related to hiring, training, hours, overtime, timekeeping, and compensation; provided ongoing operations support; had the authority to inspect, supervise, hire, and fire employees through restaurant inspections; and used the same payroll system at all restaurants. The court also rejected what it perceived to be a premature attack by Friendly's on class certification as well as other substantive attacks on the employees' claims.

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