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## BLOGS

Vicarious Liability

# Court Grants Dismissal of Discrimination Claims Against Franchisor

A federal district court in Arizona recently held that a franchisor was not liable for Title VII claims brought by an employee of one of its franchisees. In *Courtland v. GCEPSurprise, LLC*, 2013 U.S. Dist. LEXIS 105780 (D. Ariz. July 29, 2013), the plaintiff sued a franchisee as well as the franchisor, Buffalo Wild Wings, alleging that she was subject to sexual discrimination, harassment, and retaliation by members of the restaurant's management staff. Buffalo Wild Wings moved for summary judgment on the plaintiff's claims and argued that it could not be held liable for her allegations of employment discrimination because it was not her employer, nor was the franchisee its agent for purposes of vicarious liability.

In granting summary judgment, the court held that Buffalo Wild Wings was not liable because the record did not establish that it controlled the labor relations of its franchisee. The court first applied the joint employer test, under which a franchisor can be held liable for the discriminatory conduct of a franchisee if both businesses exercise significant control over the terms and conditions of a claimant's employment. The court determined that Buffalo Wild Wings did not qualify as a joint employer because the franchisee had complete independence in making employment decisions related to the plaintiff and other staff. The court further found that the franchisor's general supervision over the franchisee's products and operations was insufficient to establish a joint employment relationship absent its involvement in day-to-day employee management. In addition, Buffalo Wild Wings could not be held vicariously liable under an agency theory because the franchisee had sole responsibility for hiring, training, supervising, scheduling, compensating, reviewing, and terminating employees. Finally, there was no evidence in the record that the plaintiff reasonably relied upon representations by the franchisor that it was her employer such that liability could be imposed under a theory of apparent authority.

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