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BLOGS

Employment

Federal Court Declines to Retroactively Apply Oklahoma Law that Specifies a Franchisor is Not an Employer of its Franchisees' Employees

A federal court in New Jersey partially denied franchisor Jackson Hewitt Tax Service's motion to dismiss, allowing claims to proceed that allege Jackson Hewitt was an employer of certain of its franchisees' employees. *Mardis v. Jackson Hewitt Tax Service, Inc.*, 2019 WL 7207551 (D.N.J. Dec. 26, 2019). In so holding, the court disagreed with Jackson Hewitt's arguments that Oklahoma statute § 59-6005(B) and (C) — which expressly states that "[a] franchisor shall not be considered the employer of a franchisee or a franchisee's employees" — should be applied retroactively.

The plaintiffs were tax preparers employed at franchised Jackson Hewitt outlets who claimed that Jackson Hewitt was their employer, as defined under the Oklahoma Protection of Labor Act. The plaintiffs claimed that Jackson Hewitt had violated that law by failing to pay them certain earned commissions that constituted wages under the law. Jackson Hewitt moved to dismiss those claims, arguing that it could not be the plaintiffs' employer under Oklahoma statute § 59-6005. The effective date of § 59-6005 was November 1, 2016, and the majority of the plaintiffs' claims arose before that date. The plaintiffs essentially conceded that the claims that arose after November 1, 2016 were precluded by Oklahoma statute § 59-6005, but argued that the law did not apply to claims arising before that date. The court agreed. It found that Oklahoma laws operate only prospectively unless there is clear legislative intent to the contrary. The court was unable to discern any intent by the Oklahoma legislature to make the statute apply retroactively, although the court did concede that the law was enacted in response to the U.S. Department of Labor's 2016 Opinion letter regarding joint employer standards and the National Labor Relations Board's 2015 *Browning-Ferris* case. It further disagreed with Jackson Hewitt's claim that the Oklahoma statute could be considered a "clarifying amendment" that should be applied retroactively, because it was entirely new legislation that did not serve to amend any prior law. The court therefore permitted the plaintiffs' claims that arose before November 1, 2016 to proceed, and denied Jackson Hewitt's motion to dismiss those claims.

Related People

Maisa Frank

Partner
Washington, D.C.
202.295.2209
maisa.frank@lathropgpm.com

Richard C. Landon

Partner
Minneapolis
612.632.3429
richard.landon@lathropgpm.com