

BLOGS

Employment

Federal Court Finds Franchisor Not To Be Joint Employer of Subfranchisee's Employee

A federal court in Georgia recently held that a franchisor and its licensee were not joint employers of a subfranchisee's former employee. In *Boon v. Clark Foods, Inc.*, 2017 WL 6622554 (M.D. Ga. Dec. 28, 2017), a server at an IHOP restaurant operated by Clark Foods sued IHOP (the franchisor), an IHOP master licensee named Sunshine Partners, and Clark Foods (an IHOP subfranchisee), claiming she was discriminated against on the basis of her age in violation of the Age Discrimination in Employment Act. IHOP and Sunshine Partners filed for summary judgment on the basis that they were not the server's employer.

The court agreed, restating the general principle that the franchisor/franchisee relationship does not create an employment relationship between a franchisor and a franchisee's employees, and further ruling that neither IHOP nor Sunshine Partners retained sufficient control over the terms and conditions of employment of the subfranchisee's employees to be considered a joint employer of the server. The court reasoned that under the relevant agreements, the subfranchisee was responsible for all employment-related matters, and there was no factual evidence that either Sunshine Partners or IHOP exercised any level of control over any employment decisions made by the subfranchisee. Accordingly, the court dismissed IHOP and Sunshine Partners from the case.

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