BLOGS
Employment

Franchisor Found Not to be Joint Employer of Franchisee's Staff

In December, an Oregon federal court found that a franchisor was not a joint employer of its franchisee's employees and granted portions of the franchisor's motion for summary judgment. *Gessele v. Jack in the Box, Inc.*, 2016 WL 7223324 (D. Or. Dec. 13, 2016). The plaintiffs had brought a putative class action alleging violations of the minimum wage and overtime provisions of the Fair Labor Standards Act ("FLSA") and various state wage-and-hour laws. The plaintiffs had been employed in several of the company-owned restaurants run by franchisor Jack in the Box at the time the restaurants were sold to the franchisee. The court found that the franchisor was not a joint employer and was not liable for any of the employees' claims that arose after the date on which the franchise agreements became effective.

The court applied the Ninth Circuit's test for joint employer status by examining whether the defendant: (1) had the power to hire and fire employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment of wages; and (4) maintained employment records. Although Jack in the Box offered some training to store managers and provided some optional human resources advisory manuals, the court found those facts insufficient to show that Jack in the Box effectively exercised control under the four-factor analysis. Similarly, although franchisees were required to use the franchisor's payroll system which aggregated the data before sending it to the franchisees' payroll companies, the court found that a ministerial function did not establish true control over labor relations within the franchised businesses.

The court also granted Jack in the Box's motion for summary judgment as to the individual claims of one plaintiff who had entered into an arbitration agreement at the time of his employment with the franchisee. The court found that a provision of the arbitration agreement prohibiting employees from concerted action was illegal under the Ninth Circuit's interpretation of the FLSA. However, the court severed that portion of the agreement and found that the individual plaintiff's claims in the case were governed by the remaining provisions of the arbitration agreement.

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