

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Employment

Franchisors Continue to Struggle With Joint Employer Claims

The trend of troublesome “joint employer” lawsuits against franchisors continues. In *Benitez v. Demco*, 2015 US Dist. Lexis 20325 (S.D.N.Y. Feb. 19, 2015), for example, a federal court in New York declined to consider a franchisor’s motion to dismiss federal and New York state-law claims asserted by franchisees’ employees, on the grounds that imposing joint-employer liability is a fact specific question that cannot be resolved on a motion to dismiss. Two managers of Planet Wings franchises claimed the franchisor was liable as their employer for various wage and hour violations. To be liable, the alleged employer must possess the power to control the workers in question. This determination is made in New York using the four part “economic realities” test, which considers whether the alleged employer (1) possessed the power to hire or fire the plaintiffs, (2) supervised their work schedules or conditions of employment, (3) determined pay, and (4) established employment records. The court “could not imagine” a more fact intensive analysis, and accordingly denied Planet Wing’s motion to dismiss without prejudice, suggesting that the issue may be raised anew on a properly supported motion for summary judgment after discovery.

Similarly, in *Owens-Presley v. MCD Pizza, Inc.*, 2015 U.S. Dist. Lexis 16430 (E.D. Pa. Feb. 10, 2015), a Pennsylvania federal court denied franchisor Domino’s Pizza, Inc.’s motion to dismiss a wrongful failure to hire claim. Owens-Presley alleged that she was wrongfully denied employment at a franchised Domino Pizza restaurant on the basis of her gender. The court noted the test for determining whether Domino’s was the employer for Title VII purposes is a factual inquiry. The court found sufficient the allegations that Domino’s owned the business, owned the premises of the business, and exercised control over the management, operations, and policies of the Domino’s location through its agent the franchisee.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com