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Employment

Ninth Circuit Affirms Decision that Franchisees Are Not Employees of Franchisor

The Ninth Circuit Court of Appeals recently affirmed a decision that a group of franchisees are not employees of their franchisor, even though the trial court failed to apply the correct test. *Haitayan v. 7-Eleven, Inc.*, 2022 WL17547805 (9th Cir. Dec. 9, 2022).

The Ninth Circuit Court of Appeals recently affirmed a decision that a group of franchisees are not employees of their franchisor, even though the trial court failed to apply the correct test. *Haitayan v. 7-Eleven, Inc.*, 2022 WL17547805 (9th Cir. Dec. 9, 2022). As we [reported previously](#), 7-Eleven prevailed in a bench trial against four franchisees who argued that California law required that they be classified as employees rather than independent contractors. The trial court rejected this argument, relying primarily on the conclusions that the franchisees are engaged in a line of business distinct from that of 7-Eleven and that they hold themselves out to be business owners. The franchisees appealed, arguing that the district court should have applied the “ABC” test for violations of California wage issues.

In an extremely brief decision, the Ninth Circuit agreed that the trial court should have applied the “ABC” test to the franchisees’ claims because they accrued after 2020, and so are governed by California’s A.B. 5. The court nevertheless found the error to be harmless, in light of the “extensive factual findings” made by the trial court, findings sufficient to show that the three parts of the ABC test were met.

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