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BLOGS

Class Actions

Ninth Circuit Agrees That McDonald's Is Not A Joint Employer

In a closely watched case, the United States Court of Appeals for the Ninth Circuit has affirmed a ruling that McDonald's is not a joint-employer of its California franchisee's employees. *Salazar v. McDonald's Corp.*, 2019 WL 4782760 (9th Cir. Oct. 1, 2019). Guadalupe Salazar and other employees of a McDonald's franchisee in California filed a class action suit against both the franchisee and McDonald's alleging that defendants, as joint employers, violated various wage-and-hour statutes. After Salazar entered into a settlement agreement with the franchisee, McDonald's successfully dismissed the suit at summary judgment on the grounds that it was not a joint employer and did not owe Salazar a duty of care. Salazar appealed and the matter was heard by a three-judge panel on the Ninth Circuit.

The Ninth Circuit affirmed the lower court's ruling, concluding that under California law McDonald's did not exercise requisite levels of control over the franchisee's workers, such as control over the wages, hours, or working conditions, and that the franchisor did not meet the "suffer or permit" element of the applicable definition of an employer. Salazar argued that McDonald's should be liable as a joint employer because it knew that the franchisee was violating wage-and-hour laws since the franchisee was using software recommended and provided by McDonald's that did not comply with such laws. The Ninth Circuit noted that the proper inquiry in analyzing joint-employer status is whether McDonald's is Salazar's employer, not whether McDonald's caused the franchisee to violate the law or gave the franchisee bad tools or advice. Because McDonald's did not have the requisite level of control over Salazar's employment, the court concluded that the franchisor was not a joint employer of Salazar. Additionally, the court rejected Salazar's argument that McDonald's was liable under an ostensible-agency theory because McDonald's did not actually employ Salazar and did not actually exercise control over Salazar's wages, hours, or working conditions. This case is a significant victory for franchisors in the ever-changing landscape of joint-employer liability.

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