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## BLOGS

### Employment

# Pennsylvania Court Denies Motion to Dismiss Joint Employer Claims Based on Common Franchise Agreement Provisions

In another joint-employer case, a federal court in Pennsylvania denied a franchisor's motion to dismiss claims for sexual harassment, gender discrimination, and retaliation brought against it on a joint employer theory by a technician who worked at a franchised automotive repair facility. *Harris v. Midas*, 2017 WL 5177668 (W.D. Pa. Nov. 8, 2017). The court identified three factors necessary for a finding of joint employment: (1) the alleged employer's authority to hire and fire employees, promulgate work rules, and set other conditions of employment; (2) the alleged employer's day-to-day supervision of employees, and (3) the alleged employer's control of employee records.

The court determined that the employee's allegations supported a plausible claim, despite the employee's concession, and the court's acknowledgement, that Midas did not control hiring and firing decisions at the franchised location. In reaching its decision, the court analyzed the employee's claims against the three factors noted above, and found: (1) Midas's "training and guidance . . . regarding the creation of an employee handbook and, more specifically, the inclusion of a sexual harassment policy," supported the argument that the franchisor had the authority to promulgate work rules; (2) Midas's authority to require designated franchisee employees to attend its training supported "at least a weak showing" of the authority to exercise day-to-day control over employees of the store; and (3) while acknowledging that Midas's right to examine and audit the franchisee's books and records likely related to financial records rather than personnel records, the court found the provision was broad enough to support a finding that Midas had control over employee records. While acknowledging that the motion to dismiss was a "close call," and recognizing that the employee's claims may be disproved through discovery, the court nevertheless allowed the case to proceed against the franchisor and its affiliates.

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