

PUBLICATION

NLRB General Counsel Office: McDonald's, USA, LLC and Its Franchisees Are Joint Employers

Authors: Joel Buckberg

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The National Labor Relations Board Office of Public Affairs announced on July 29, 2014 that the General Counsel of the National Labor Relations Board has authorized complaints against McDonald's, USA, LLC (McDonald's) and various of its franchisees in 43 cases for alleged violations of the National Labor Relations Act arising from responses to employee protests. By authorizing the complaints, the Office of the General Counsel has found merit in these 43 cases, while finding no merit in over 60 other cases. The Office of Public Affairs also has announced that McDonald's will be named in these cases as a joint employer along with the franchisees of the restaurants where the complaints arose. If the complaints are pursued successfully to their conclusion with judicial determination of employer liability, McDonald's could be liable for the management decisions of the franchisees of these restaurants. McDonald's denies that its relationship with its franchisees is that of a joint employer and has announced that it will contest any such determination and the cases brought as a result.

The joint employer concept has been applied to hold two parties liable for the actions of one party, or where employee supervision appears to be split between two parties. Employment law traditionally holds only the party who is the statutory employer liable for violations of these laws. Joint employer status occurs when one party controls or has the right to control employer decisions and employee supervision of another party. Franchisors have been careful in most cases to avoid the level of control needed to become a joint employer with franchisees under the standards established by legislation and interpreted by the courts.

These cases involve labor organizing by the Service Employees International Union (SEIU), which is seeking higher wages and benefits for hourly workers in franchised businesses like quick service restaurants. Because of the relatively small numbers of employees for each franchisee, and the lack of common ownership or corporate control of the ownership of these restaurants, the organizing of these businesses has been stymied. The SEIU wants the NLRB to introduce multi-employer collective bargaining across franchise systems and to promote the application of the financial resources of franchise systems to provide higher pay and benefits for these workers. Joint employer status is an important first step in this process and could provide a method for unionization of thousands of workers in quick service restaurants.

The NLRB's Office of General Counsel has not articulated its reasoning for finding McDonald's to be a joint employer with its franchisees, but an attorney representing the restaurant workers pointed to factors such as McDonald's use of a computer system that tracks the franchisee stores' operations. The decision could affect over 700,000 businesses employing directly and indirectly over 8,500,000 workers.

A successful prosecution of the complaints could also impact joint employer claims in discrimination, retaliation, wage and hour, workers' compensation, and other employment cases, as other federal and state agencies and courts may apply the NLRB's principles to situations such as the use of staffing agencies, parent corporation liability for acts of subsidiaries, and contractors' liability for acts of subcontractors.

If you have any questions about this development or any concerns about your potential for being a joint employer, please reach out to one of our Hospitality, Franchise and Distribution attorneys or one of our more

than 70 Labor & Employment attorneys located in Birmingham, Alabama; Tallahassee, Florida; Atlanta, Georgia; Baton Rouge and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.