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Third Circuit Establishes New Test for "Joint Employers" Under the FLSA

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A determination that a company is a "joint employer" can dramatically increase its potential exposure to liability under the Fair Labor Standards Act, because joint employers can be held responsible for each other's violations of the law. Until now, employers in Pennsylvania, New Jersey and Delaware have been without clear instruction on what it means to be a joint employer. That changed on June 29, when the U.S. Court of Appeals for the 3d Circuit issued an opinion articulating the standard under which joint employer status will be evaluated in cases filed in federal court within those states.

At issue in the case, *In re: Enterprise Rent-a-Car Wage & Hour Employment Practices Litigation*, was whether Enterprise Holdings – the sole stockholder of 38 domestic subsidiaries – is a joint employer of the assistant managers who work for those subsidiaries. For the reasons discussed below, the court found that no joint employer relationship exists between Enterprise Holdings and its subsidiaries. A link to the opinion is here.

The plaintiff alleged that he, along with other assistant branch managers at Enterprise locations, was improperly classified as exempt from overtime under the FLSA. He sued Enterprise Holdings and a number of subsidiaries for failure to pay overtime. Enterprise Holdings moved for summary judgment on the grounds that it was not a joint employer with the subsidiaries, and therefore could not be held liable for their actions. The district court granted the motion, and the 3rd Circuit affirmed.

The court noted that the three-member board of directors for each subsidiary consisted of the same people who sat on Enterprise Holding's three-member board. The court also pointed out that Enterprise Holdings provided certain administrative support to the subsidiaries, and provided them with business guidelines, employee benefit plans, rental reservation tools, job descriptions, best practices, compensation guides, and performance review forms, among other things. Key to the court's decision was that "each individual subsidiary can choose to use any or all of these guidelines or services in its own discretion; none of these guidelines or services are mandatory."

In applying these key facts to determine whether a joint employer relationship was present, the court adopted the standard it established in *NLRB v. Browning-Ferris Industries of Pennsylvania*, for cases brought under the National Labor Relations Act. Under this standard, a joint employer relationship exists for purposes of FLSA liability "where two or more employers exert significant control over the same employees – [whether] from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." The court emphasized that "ultimate control" over employees is not necessary for an entity to be found a joint employer.

In order to determine whether significant control over employees is present, the court identified the following factors that courts should consider:

1. the alleged employer's authority to hire and fire the relevant employees;
2. the alleged employer's authority to promulgate work rules and assignments and to set the employees' conditions of employment: compensation, benefits, and works schedules, including the rate and method of payment;

3. the alleged employer's involvement in day-to-day employee supervision, including employee discipline; and
4. the alleged employer's actual control of employee records, such as payroll, taxes, and insurance.

These factors are not meant to be an exhaustive list, the court emphasized, and should not be "blindly applied as the sole considerations necessary to determine joint employment." Rather, if other indicia of significant control are present in a given case, the court should take those indicia into account when analyzing joint employer status.

Take-away for employers

The determination of whether a company is a joint employer for purposes of FLSA liability is a fact-intensive analysis that will vary from case to case. Courts within the 3rd Circuit will now apply the *Enterprise* factors to determine whether a company exerts sufficient control over another's employees to be considered a joint employer. Companies unsure of whether they are a joint employers for purposes of FLSA liability should consult their labor and employment counsel.

To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact:
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