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NLRB Issues Joint Employer Decision Potentially Affecting Franchisors

AUGUST 28, 2015 Written by John Jett, Christopher P. Bussert,

Yesterday, the National Labor Relations Board ("NLRB") issued a landmark ruling that greatly expands the definition of corporate employee under the "joint employer" standard. The NLRB's decision is significant for franchisors among others because it will likely affect the arms-length relationship that franchisors have sought to preserve with their franchisees' employees.

Under the previous standard, a company such as a franchisor could be a joint employer if it had direct and immediate control over working conditions. Under the standard announced yesterday, a company such as a franchisor can be a joint employer if it has indirect control over working conditions or reserves the right to exercise that authority.

The NLRB opinion does not specify exactly how much indirect control is required to constitute a joint employer relationship. The board suggested the facts and circumstances of each case must be examined individually.

Concerns have been raised that this decision may affect the franchise model, which traditionally relies on franchisees' ability to supervise their own employees. Among other potential consequences, the prospect of joint employer status will presumably lead to efforts in future lawsuits to hold franchisors (with their generally deeper pockets) liable for the acts and omissions of their franchisees' employees.

The NLRB decision is appealable so there will likely be more to this story in the coming weeks and months.

To read the full case opinion, please click here.

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