Federal Appeals Court Announces First-Ever Test for Determining Joint Employer Status Under the FLSA

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In a case of first impression, the federal appeals court responsible for the Delaware Valley recently announced a test for determining whether a company is a "joint employer" under the Fair Labor Standards Act. The test, known as the *Enterprise* test, should be carefully considered by companies with affiliates, and by companies that either outsource or provide external human resources functions.

The decision was by the Third Circuit Court of Appeals, headquartered in Philadelphia, and is known as *In Re: Enterprise Rent-A-Car Wage & Hour Practices Litigation*. In that case, a former assistant branch manager of an Enterprise-Rent-A-Car branch in Pittsburgh filed a nationwide class action alleging that the defendant, Enterprise Holdings, Inc., violated the FLSA by failing to pay required overtime wages. The FLSA is the primary federal wage and hour law, regulating minimum wage and overtime for most private employers. Enterprise Holdings is the parent company of the Pittsburgh branch as well as 37 other domestic subsidiaries.

Enterprise Holdings provides both administrative services and support to each of its subsidiaries. These services include business guidelines, employee benefit plans, rental reservation tools, a central customer contact service, insurance, technology and legal advice. While the use of these services is optional, each of the subsidiaries pays corporate dividends and management fees in exchange for these offerings. Enterprise Holdings also has a human resources department that provides the subsidiaries with job descriptions, information related to best practices, compensation guides, training materials, and negotiated health plans. Again, none of these services or guidelines is mandatory, but they are freely and regularly used by the subsidiaries.

The issue before the Court was whether Enterprise Holdings and its subsidiaries were "joint employers" under the FLSA, i.e., even though it was a parent company, was Enterprise Holdings liable for wage and hour violations of its subsidiaries, due to the human resources functions it provided them? The trial court ruled in favor of

Enterprise Holdings, but on appeal, the Third Circuit announced a new test for determining joint employer status within the meaning of the FLSA. Similar to other tests relating to whether an employment relationship exists, this test focuses on whether or not two or more employers exert 'significant control' over the same employees.

The court set forth four factors to be considered when deciding if a company exercises sufficient control over another company's employees to be deemed a joint employer:

(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 work 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, insurance, or taxes.

The court was quick to highlight that these factors *do not constitute an exhaustive list* and they cannot be blindly applied. And, they need not all be answered affirmatively or negatively to support a finding that joint employment status exists or does not, respectively. Rather, the court stressed that all circumstances should be considered in the determination and that other indicia of "significant control" could influence a finding of joint employer status.

In applying this test, the Third Circuit was persuaded that joint employer status was lacking because the plaintiffs failed to produce evidence that Enterprise Holdings' actions amounted to anything more than mere recommendations. It likened the level of Enterprise Holdings' authority over the plaintiffs to that of a third-party consultant who merely provided suggestions for improvements to the subsidiaries' business practices.

This case is instructive for companies sharing administrative and human resources functions. Companies acting in a merely advisory capacity can rely on this holding to avoid potential liability, while those taking a more active role in affecting employees' terms and conditions of employment should take extra precautions to ensure that all wage and hour practices are in compliance with the law. Careful consideration of these factors is critical given the significant liabilities that are available for FLSA violations.

If you have questions or concerns related to this ruling or other labor & employment matters, please contact a member of Archer's Labor and Employment Department in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, or in Hackensack, N.J., at (201) 342-6000.

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