



Federal Court Rules Successor Entity Can Be Liable Under Federal Wage Laws

Client Advisories

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On April 3, 2014, the Third Circuit Court of Appeals, the federal appeals court headquartered in Philadelphia, issued an important decision that, for the first time by this court, imposes liability on successor entities under the Fair Labor Standards Act (FLSA). In *Thompson v. Real Estate Mortgage Network, et al.*, the court followed the lead of other federal appeals courts around the country in finding that application of the federal common law standard for successor liability should also apply to FLSA claims. The end result is that entities (such as corporations and LLCs) merging with, or even acquiring other entities, may be on the hook for wage and hour claims of their predecessors.

Patricia Thompson was hired as a mortgage underwriter by Security Atlantic Mortgage Company ("Security Atlantic"). While in the midst of an investigation by the U.S. Department of Housing and Urban Development relating to its mortgage practices, Security Atlantic invited many of its current employees to apply for new positions with a purported sister company, Real Estate Mortgage Network ("REMN"). Thompson and others applied and accepted positions with REMN. Despite the change in employer, Thompson alleged that there was virtually no change in operations - Thompson and her colleagues continued to do the same work, at the same location, for the same pay and under the same supervision.

In March 2011, Thompson filed a class action lawsuit in federal court against both Security Atlantic and REMN, alleging that they had misclassified Thompson and other mortgage underwriters as exempt employees and therefore, failed to pay them proper overtime compensation in violation of the FLSA and New Jersey's wage and hour laws. By the time her suit was filed, Security Atlantic was defunct. Although the trial court dismissed the claim against the new employer (REMN), Thompson appealed, arguing that REMN should be liable under the FLSA as a successor to Security Atlantic, and its alleged violations of the wage and hour laws.

On appeal, the Third Circuit agreed with Thompson. Rather than applying the narrower successor liability rules under New Jersey law, the court found that the federal common law standard of successor liability should apply. The federal standard was designed to impose successor liability to protect important employment-related policies and requires consideration of only the following factors: (1) continuity in operations and workforce of

the successor and predecessor; (2) notice to the successor of its predecessor's legal obligations; and (3) ability of the predecessor to provide adequate relief directly. Critically, factors such as common owners or the nature of the transaction (e.g. was it a merger or an asset purchase) did not enter into the analysis. In reaching its decision, the court relied on previous decisions finding that the federal successor liability standard applied to other labor and employment statutes such as the National Labor Relations Act, Title VII, and ERISA.

This decision should be on the radar of successor entities not only because it expands the scope of their potential liability and forewarns of increased litigation costs, but also because the decision stands to significantly impact bargaining table practices. Specifically, it is more important now than ever for future successors-in-interest to do their due diligence in examining the wage-and-hour practices of an acquired or merged entity and to consider these newly associated liabilities in the course of negotiations.

If you have any questions about this advisory or other labor and employment matter, please contact any member of Archer's **Labor & Employment Law Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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