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McDonald's Corp. Dismissed from Suit Over Wage Violations at Franchises

Ostensible Agency Theory Rejected by Court



A class action attempt to establish joint employer liability between franchisor McDonald's Corporation and its franchisee for allegedly unpaid wages through an ostensible agency theory was brought to an end recently by a federal

court. McDonald's second motion for summary judgment was granted in March in *Salazar v. McDonald's Corp.*

The case began in 2014 when the plaintiffs – more than 2,000 current and former employees – filed suit against McDonald's and the operator of eight franchises in San Leandro and Oakland. The plaintiffs sought recovery of wages allegedly owed to them.

Under the franchise agreement between McDonald's and the operator, McDonald's set the general operational standards, while the operator was placed in charge of personnel. Despite this delineation, the plaintiffs argued that McDonald's oversight of the operator's compliance with operating standards amounted to control over the employees and workplace conditions, forming a basis for McDonald's liability to the employees.

McDonald's filed a first motion for summary judgment, arguing that it had no such control over the employees or workplace conditions and therefore, it could not be held liable for any alleged violations of the Labor Code.

In August 2016, the court granted the motion in part and denied it in part. In particular, the court concluded that McDonald's did not directly or indirectly control the plaintiffs' employment, permit plaintiffs to work, or engage in an actual agency relationship with the plaintiffs. However, the court determined that there was a genuine disputed issue regarding whether an ostensible agency relationship existed. An ostensible agent is a person who has been given the appearance of being an employee or acting for another, which would make

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anyone dealing with the ostensible agent reasonably believe he or she was an employee or agent. The court determined that there was considerable evidence that the plaintiffs could believe they worked for both the operator and, through the operator's relationship with McDonald's, the Corporation itself.

Following the August 2016 ruling, McDonald's filed a second motion for summary judgment and argued that ostensible agency theory could not support the Labor Code claims asserted by the plaintiffs.

This time around, the court agreed with McDonald's on the issue of ostensible agency, reasoning that the Industrial Welfare Commission's wage orders define the employment relationship and which entity would be liable for violations of the Labor Code. In particular, IWC Wage Order 5-2001 requires that an employer employ or exercise control over the workplace environment. The court concluded that the IWC's definition of an employer was inconsistent with and took precedence over the ostensible agency theory offered by the plaintiffs.

Accordingly, the court granted McDonald's second motion for summary judgment on March 10, bringing the case to a close. The plaintiffs' attorneys have stated that they will appeal the court's decision.

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