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Employment Law
MONTHLY

Attorney Advertising

July 2012

Are All Parent Companies Joint Employers?
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The mere existence of a parent company does not automatically mean that the company is subject to liability for the sins of a subsidiary under the Fair Labor Standards Act ("FLSA"). In a recent case the Third Circuit Court of Appeals established a new test for determining whether a joint employment relationship exists. *In re Enterprise Rent-A-Car Wage & Hour Emp't. Practices Litig.,* 2012 U.S. App. LEXIS 13229 (3d Cir. June 28, 2012). Essentially, if a company exerts significant control over an employee, then that company is the employee's employer. This determination is crucial in deciphering a company's potential exposure to liability under the FLSA.

RELEVANT FACTS

Defendant parent company, Enterprise Holdings, Inc., was the sole shareholder of 38 domestic subsidiaries, including Enterprise-Rent-A-Car Company of Pittsburgh, the former employer of one of the named plaintiffs, Nickolas Hickton. The 38 subsidiaries mainly rented and sold cars under the "Enterprise" brand name. Enterprise Holdings, Inc., on the other hand, provided administrative and human resource services to each subsidiary, including business guidelines, employee-benefit plans, rental reservation tools, job descriptions, best practices, and compensation guides. The subsidiaries' use of these services were optional and at their complete discretion. Though, while Enterprise Holdings, Inc. and its 38 subsidiaries each had their own separate board of directors, each board consisted exclusively of the same three individuals.

DISTRICT COURT RULING

Hickton, a former assistant manager of Enterprise-Rent-A-Car Company of Pittsburgh, along with other assistant managers, filed a class action suit under the FLSA, alleging that both the subsidiaries and Enterprise Holdings, Inc. failed to pay assistant managers overtime in violation of the FLSA. Specifically, the complaint alleged that Enterprise Holdings, Inc.'s 38 subsidiaries unlawfully classified the plaintiffs and other current and former assistant managers as exempt under the FLSA. The complaint also asserted that as the parent company that created certain guidelines and business practices, Enterprise Holdings, Inc. was also liable as a joint employer. Enterprise Holdings, Inc. subsequently moved for summary judgment and argued that it was not the plaintiffs' joint employer and thus not liable under the FLSA. The district court granted Enterprise Holdings, Inc.'s motion and found that the plaintiffs did not proffer any evidence to show that Enterprise Holdings, Inc. had direct control over plaintiffs' employment to warrant a finding of joint employer liability. The plaintiffs appealed.

THE THIRD CIRCUIT AFFIRMS

On appeal, the Third Circuit Court of Appeals affirmed the lower court's decision. The court initially acknowledged that the definition of an employer under the FLSA is broad. *In re Enterprise Rent-A-Car Wage & Hour Emp't. Practices Litig.,* 2012 U.S. App. LEXIS 13229, at *12. Pursuant to 29 U.S.C. § 203(d) an employer is "any person acting directly or indirectly in the interest of an employer in relation to an employee." *Id.* at *11. Furthermore, the court noted that the FLSA regulations provide more guidance to the analysis -- that a joint employment relationship exists "[w]here the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, *directly or indirectly,* by reason of the fact that one employer controls, is controlled by, or is under common control with another employer." 29 C.F.R. § 791.2(b) (emphasis added). Thus, a joint-employer relationship exits when the parent company exerts significant control over employees.

Although the Third Circuit upheld the district court's decision, it held that the district court's test must be revised as it only analyzed whether Enterprise Holdings, Inc. exercised direct control over the plaintiffs. The court noted that evidence of sufficient indirect control can establish liability under the FLSA. As such, the court modified the test used by the lower court as follows and held that courts must 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 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.

Id. at *17. The court stated that this list is not exhaustive and that courts must analyze the "total employment situation and the economic realities of the work relationship." *Id.* at 16.

The plaintiffs argued that other factors established that a joint employment relationship existed between plaintiffs, the subsidiaries, and Enterprise Holdings, Inc. First, plaintiffs alleged that the shared board of directors demonstrated a degree of control over plaintiffs' employment. Second, plaintiffs asserted that the nature of the business of renting cars involved both Enterprise Holdings, Inc. and its subsidiaries. Third, the plaintiffs argued that the "recommended" employment systems and benefits were, in fact, mandatory guidelines and business practices.

The Third Circuit disagreed and stated that there was no evidence to suggest that Enterprise Holdings, Inc.'s recommended administrative and human resource services were mandatory. In addition, although consideration of other factors outside of those proffered in the test is required, the court decided that the interlocking directors and the nature of the business did not weigh heavily against the finding that a joint employment relationship did not exist in this case. The court held that one or two factors that favor the existence of a joint employment relationship does not automatically prove the relationship exists as a matter of law. The court reasoned that Enterprise Holdings, Inc. served more as a consultant to the subsidiaries, as its policies were not required to be adopted and thus the defendant had no authority to hire or fire the plaintiffs, to set compensation, or to promulgate work rules or assignments. As such, the Third Circuit affirmed the district court's decision.

BOTTOM LINE

This analysis is a fact-sensitive inquiry and thus parent companies should consult their legal counsel to determine whether they are joint employers and subject to the FLSA. This decision is helpful as a guide for companies on how to shape relationships with other companies and subsidiaries to avoid liability under the FLSA. Parent companies that act more as a consultant to a subsidiary, rather than being involved in the day-to-day management of employees (direct control) or creating employment guidelines that subsidiaries must follow (indirect control), will likely not be subject to liability under the FLSA for the actions of a subsidiary entity.