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Recent Court Decision Holds Franchisor Lacked Control to be Liable for Franchisee's Employment Actions: Are You in Control?

A federal district court in Arizona recently ruled that a franchisor lacked control over a franchisee's employment matters and could not be held liable, either vicariously or as a joint employer, for employment discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII").

Courtland v. GCEP-Surprise, LLC et al., No. CV-12-00349-PHX-GMS (D. Ariz. July 29, 2013).

Courtland, a former bartender and server at a franchised Buffalo Wild Wings restaurant in Arizona, sued the franchisee, GCEP-Surprise, LLC ("GCEP"), its franchisor Buffalo Wild Wings, Inc., and Buffalo Wild Wings International Inc. (collectively "BWWI"), alleging that she was subjected to sexual discrimination, harassment, and retaliation by the franchised restaurant's general manager in violation of Title VII. Courtland alleged that BWWI should be held liable for the franchisee's manager's misconduct as a joint employer and because the franchisee was BWWI's agent for purposes of vicarious liability.

To support her joint employer claim, Courtland argued that she received on-the-job-training from BWWI corporate trainers and an employee handbook containing the BWWI logo, was told by her

superiors that she was a BWWI employee, and her place of employment displayed BWWI trademarks. The court disagreed, finding that BWWI did not have responsibility over the hiring, firing, and supervision of employees at GCEP, as GCEP was responsible for those decisions; BWWI did not compensate GCEP employees, as GCEP was responsible for payroll, scheduling, and employee recordkeeping; GCEP independently determined employee performance reviews, promotions, and discipline; training was GCEP's responsibility; BWWI was not involved with GCEP's HR matters; and BWWI did not influence GCEP's conduct of its daily operations or share profits with GCEP. In this last respect, the court was persuaded by a provision in the franchise agreement stating that GCEP was an independent business person and responsible for control and management of its restaurant. The court held that BWWI's overall "operational supervision" did not equate to joint employer status under these circumstances.

The court also rejected Courtland's vicarious liability claim, finding that although BWWI "maintained strict guidelines as to the presentation and operation of the Restaurant," that did "not establish, without more, that BWWI had control over the Restaurant's managerial staff." According to the court, the "predominant" test for holding a franchisor vicariously liable is whether the franchisor "controls or has the right to control the daily conduct or operation of the particular 'instrumentality' or aspect of the franchisee's business that is alleged to have caused harm." "[V]icarious liability attaches for employment discrimination if the franchisor exerts daily control over the hiring, firing, and supervision of franchisee employees," the court stated. Applying this test, the court found that BWWI did not have control over the conduct of the restaurant's managerial staff – the "instrumentality" alleged to have caused harm to Courtland – and therefore BWWI was not vicariously liable for the manager's misconduct.

The *Courtland* opinion is an important and timely reminder to franchisors to review their franchise training manuals, practices, and policies with respect to employees of franchisees. For questions or more information regarding the *Courtland* decision and its implications, please contact us.

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