



Recent Court Ruling Teaches Florida Employers 5 Key Lessons to Avoid Joint Employer Troubles

Insights

2.16.24

A federal court in Florida recently ruled that a company was not the joint employer of an aggrieved worker who was trying to drag it in as an additional party to his discrimination lawsuit. The court's January 29 decision offers a helpful reminder – and a five-step roadmap – for Florida employers seeking to avoid the pitfalls that can come from an unintended joint-employer relationship.

What Happened?

An employee in Lakeland, Florida worked for a company that provided logistics services to a national retail chain. The retail chain owned the distribution center where he worked.

Following his termination for alleged participation in a pyramid scheme where he solicited and obtained thousands of dollars from coworkers, he filed a lawsuit alleging unlawful discrimination and retaliation. But he filed his claim against both the logistics company and the retail chain, arguing that the two entities jointly employed him.

In its January 29 ruling, the federal court rejected his joint employer argument. It held that that the two entities did not exercise sufficient control over each other's employees and their essential terms and conditions of employment such to be considered joint employers under the law.

How Can Florida Employers Set Themselves Up For Success? Your 5-Step Roadmap

- 1. Develop Clear Contractual Agreements:** Establishing clear agreements with third parties is crucial – particularly in contracts with service providers. Clearly outline roles, responsibilities, and expectations in written contracts with your business partners, explicitly stating that the third party maintains the right to control its employees' day-to-day operations – including aspects like hiring, supervision, and management.
- 2. Ensure Consistency in Practice:** Specifying roles in contractual arrangements is only the start. You should ensure that, in practice, you do not actually share or co-determine matters governing employees' essential terms and conditions of employment – such as wages and benefits, hours of work and scheduling, supervision of work performed, disciplinary action, and similar matters.
- 3. Maintain Separation in Forms and Policies:** The court considered that the employee at one point in time received the retail company's employee handbook AND that his paychecks at one point

had the retail company's name on them. The court ultimately determined that these factors were insufficient in light of the absence of the ability to control terms and conditions of employment. However, this should serve as a reminder to maintain separation in your employment documents and policies.

4. **Stay Abreast of Changes to Applicable Law:** Tellingly, the court stated, "Courts predominantly apply the standards promulgated by the National Labor Relations Board when deciding whether two entities should be treated as a joint employer." The NLRB has recently changed the landscape for which entities qualify as joint employers, effectively making it much easier for organizations to qualify as joint employer. Indeed, the NLRB has been incredibly active in this regard. You should constantly stay abreast of the latest legal developments which might warrant changes to the structure of existing relationships.
5. **Regularly Audit Contractual Arrangements and Employment Practices:** To further minimize risk of joint employment, you should set regular reminders to audit agreements with third-party service providers. You should review existing relationships with third parties for any indicia of control exercised over the terms and conditions of employment for the third-parties' employees.

Conclusion

Fisher Phillips will continue to monitor workplace law developments and provide additional insights as needed. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information and invitations to our webinars. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Florida offices.

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