



3rd Circuit Addresses FLSA "Successor" Liability

Insights

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Federal courts continue to embrace a broad view in evaluating the question of whether federal Fair Labor Standards Act liability may be imposed upon a successor company in particular situations.

The 3rd Circuit U.S. Court of Appeals (with jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands) is the latest to do so in *Thompson v. Real Estate Mortgage Network*.

Employee Shifted Between "Sister" Companies

Thompson was hired by Company A, but she was trained by "sister" Company B. About a year later, she was told to complete a job application for employment at Company B.

From that point on, she received her paychecks from Company B. However, Thompson alleged that there was no change in her day-to-day job duties, pay method, pay rate, work location, direct supervisors, and so on.

Thompson eventually resigned and filed an FLSA lawsuit against Companies A *and* B (and also against two co-owner members of management). The defendants said that Company A was "defunct", but Thompson argued in part that Company B was her successor-employer in any event and was therefore liable for Company A's alleged FLSA violations. The lower court dismissed Thompson's complaint outright, but the 3rd Circuit ruled that she was entitled to pursue FLSA claims against Company B as a possible successor to Company A.

State Law, Or Federal Law?

The defendants argued that state-law successorship principles should be applied. They also contended that those principles called for a restrictive analysis under which Company B could not be liable for Thompson's employment by Company A.

The 3rd Circuit disagreed. Relying heavily upon the reasoning in a 2013 7th Circuit decision (on which we reported at the time), the court held that it was appropriate to use broader and more employee-friendly *federal-law* principles evaluating such things as:

- Whether there is a continuity of operations and workforce from one entity to the next;
- Whether the alleged successor has notice of possible FLSA violations; and
- Whether the predecessor is able to satisfy an award of FLSA damages.

The 3rd Circuit did not go on to decide the successorship question, because the evidence had not yet been adequately developed.

The Bottom Line

This case serves as a reminder that FLSA successor-liability might be imposed in a variety of factual scenarios, including some not involving traditional seller/purchaser settings.

Moreover, the trend appears to be for federal courts to apply expansive federal principles in deciding whether there is successor-liability. This means among other things that employers taking on workers through corporate acquisitions or who are faced with "inheriting" employees from related corporate entities should consider the potential FLSA ramifications carefully and in advance.

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