



# Top Official Held Personally Liable Under FLSA (Updated 03 12 14)

Insights

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**UPDATED 03 12 14:** The U.S. Supreme Court has declined to review this case, so the 2nd Circuit's decision stands. This action does not mean that the Supreme Court approves of or has ratified the decision or has otherwise expressed any opinion about the ruling.

**UPDATED 12 13 13:** The individual found to have been personally liable now seeks the U.S. Supreme Court's review of the 2nd Circuit's ruling. He contends that the rationale for the 2nd Circuit's decision "exposes virtually every corporate officer and controlling shareholder to personal liability for his or her company's acts, regardless [of] whether those individuals played any role in – and thus bore any personal responsibility for – the employment decisions that violated the statute." He essentially contends that an individual can be held personally liable under the FLSA only where there is a showing of the person's "more active involvement" in the corporate decisions and acts that were unlawful.

A recent decision by the 2nd Circuit U.S. Court of Appeals (Connecticut, New York, and Vermont) is a reminder that individual business owners and management members can face claims of personal liability for federal Fair Labor Standards Act violations. In *Irizarry v. Catsimatidis*, the court found that a supermarket company's owner, chairman, and CEO was an "employer" within the FLSA's meaning and was therefore personally liable for millions in FLSA collective-action liability. The court so concluded even while acknowledging that there was no evidence that the owner himself either was responsible for the FLSA violations or ever directly managed or interacted with the plaintiffs.

## Who Is An "Employer"?

Believe it or not, the FLSA does not definitively say who qualifies as an "employer". Where allegations of personal liability are concerned, the courts decide the matter case-by-case, taking into account all of the relevant circumstances. They do so against the backdrop of the FLSA's broad remedial purposes and its "expansive interpretation," as the 2nd Circuit put it.

Even so, the *Irizarry* court felt that more than just "any amount of corporate control" is necessary so as to prevent individual exposure from being extended too far. Neither did the court see either ownership or an ownership interest, standing alone, as being enough to justify individual liability.

Instead, the court's analysis revolved principally around whether the "totality of the circumstances" showed that the owner's operational control of the business included a decisionmaking role that, even if it fell short of day-to-day supervisory involvement or actual complicity in FLSA violations, nonetheless directly affected the nature or conditions of the employees' employment.

### **"Employer"-Status Considerations**

The 2nd Circuit observed among other things that the owner exercised broad overall authority; exercised influence in specific stores' operations on multiple occasions; and hired, oversaw, and fired individuals who were themselves managerial and were in charge of subordinate employees. It also noted that he had the power to hire and fire any employee (even though he rarely exercised this power); addressed problems that arose in particular stores; interacted with promotion candidates; had overall financial control over the company; electronically signed paychecks; and tracked accounting reports and information, including payroll expense.

Taking together these and other details, the court determined that the owner possessed and exercised functional control over the business, and consequently over the plaintiffs' employment. While the company was larger than some involved in other cases that have considered individual liability, the court saw the owner's involvement in daily operations as being more than "symbolic or ceremonial" or simply a "legal fiction".

### **The Bottom Line**

*Irizarry* illustrates a continuing risk that individual liability will be asserted in an FLSA lawsuit. And although this particular case involved a business owner, the prospects are by no means limited to such people. Non-owner officers, managers, supervisors, and even human-resources personnel are sometimes individually-named targets. This is just one more reason among many to ensure that your organization is FLSA-compliant.

### ***Related People***

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