



## Could Your **PERSONAL** Assets Be In The FLSA Crosshairs?

Insights

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Latest reports suggest that the already-anemic economy has stalled in recent months. And the hard times seem to be fueling a continued wave of lawsuits by current and former employees over issues like minimum wages and overtime. A number of these lawsuits seek to hold certain individuals *personally* responsible for claims for unpaid wages under the federal Fair Labor Standards Act.

The FLSA applies only to employment relationships, so a million-dollar question (sometimes literally) is – who qualifies as an "employer"? The FLSA says that the term includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d). Thus, in certain circumstances, courts hold that an individual is an FLSA employer so as to be liable – along with any other entity or individual meeting the definition of "employer" – for any back-pay, liquidated damages, attorneys' fees, penalties, costs, or other relief awarded in an FLSA lawsuit.

Whether an individual qualifies as an employer is decided on a case-by-case basis, and the factors considered might vary somewhat from one jurisdiction to another. Generally speaking, the more control an individual has over the employment relationship, the more likely it is that he or she will be deemed to be an employer. For instance, an individual who controls the nature, structure, or economics of the employment relationship is likely to be an employer within the meaning of the FLSA. If an individual maintains a significant level of financial control over a company and/or has a significant role in making personnel decisions and in establishing pay policies, that person is more likely to be deemed an employer under the FLSA. Consequently, owners, officers, and even managers and HR personnel can find themselves to be the individually-named targets of an FLSA lawsuit.

The bottom line is that individuals *can* be personally liable for unpaid wages and other remedies under the FLSA, which also means that an individual's own assets could be used to satisfy violations. Further, as employers continue to struggle financially, naming individuals as defendants might become an increasingly common tactic – suing more defendants means that there could be more pockets from which to collect a judgment.