



State Supreme Court Clarifies The Definition Of "Employ"

Insights

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Recently the California Supreme Court held that third-party merchants were not "employers" as defined by the Industrial Welfare Commission, in part because they did not control the conditions of employment for the subject agricultural employees (strawberry pickers), i.e., did not hire them, fire them, or even have a right to tell them what to do or direct their work. The practical effect in this litigation was that the employees could not obtain unpaid wages from third-party merchants after the uncontested employer became insolvent. *Martinez v. Combs*.

The Basis Of The Decision

The legal impact of the decision is far reaching. The Supreme Court made clear that the definition of "employ" in actions arising under the Wage Orders was not limited to the *common law* definition alone, but entailed the following:

- to exercise control over the wages, hours, or working conditions, *or*
- to suffer or permit to work, *or*
- to engage, thereby creating a common-law employment relationship.

The court also ruled that individual liability would not be imposed on "individual corporate agents acting within the course and scope of their agency." Nor should California courts look to the broader definitions of "employer" under federal law, such as the "economic reality test," to find individual liability where such liability does not otherwise exist under California law. An employment relationship should be found only when the entity in question has the ability to prevent the alleged violations, for example, the power to hire employees, fire employees, or a right to tell employees what to do or direct their work.

The court also reasoned that the mere fact that the merchants communicated with the employer's supervisors regarding how they wanted the strawberries prepared or processed for the markets did not convert their status as financially interested merchants to that of an "employer," or even a "joint employer."

In addition, the mere presence of the defendant merchants in the money chain or the contractual pipeline, wherein the defendant merchants benefited financially from the employees' labor, did not make these merchants "employers" over the employees as defined by the Wage Orders or California Labor Code.

Finally, the merchants' comments that they would make sure and pay enough money to the employer so that the employee's wages would be covered did not make the merchants employers or joint employers.

These clarified standards, derived from a well-documented fact dispute, will assist the courts in defining when merchants, purchasers, investors, or other entities may in actuality be "employers," thereby exposing themselves to individual or "joint employer" liability.

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