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Franchisors are lovin' it! NLRB orders settlement in landmark McDonald's case

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On Thursday, December 12, 2019, the National Labor Relations Board issued a ruling granting McDonald's Corp. a major victory in a multi-year battle regarding the franchisor's alleged responsibility as a "joint employer" with its franchisees. Specifically, the NLRB ruled that franchisees could settle the case without McDonald's being named a joint employer – shielding McDonald's from the liability of the labor violations and employment practices of its franchisees.

This case stemmed from a series of complaints against the franchisor and some franchisees, claiming that McDonald's fired and retaliated against employees for supporting union activity and participating in protests beginning in 2012 in which they demanded higher wages and a union.

Initiated by Obama administration officials, the litigation (in which the series of complaints were consolidated) generally sought to compel franchisors to bargain collectively with employees and share liability for workplace violations.

Under the new administration, however, this NLRB's ruling overruled the earlier decision by Administrative Law Judge Lauren Esposito and ordered her to approve an approximately \$170,000 settlement between McDonald's franchisees and their workers, absolving the franchisor from any direct responsibility as a "joint employer." Judge Esposito had initially rejected the proposed settlement as inadequate.

McDonald's has fought the joint employer battle in various other litigations. In fact, on October 1, 2019, the franchisor avoided liability in a decision by the United States Court of Appeals for the Ninth Circuit, which ruled that it did not have enough control over franchise employees to be considered a joint employer that is liable for employee pay. Yet, still hanging in the balance are several other lawsuits that seek to hold the McDonald's

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franchisor responsible for the treatment of franchise workers, including sexual harassment and violent customer attacks.

A HUGE WIN FOR FRANCHISORS

The McDonald's case was being closely tracked by Franchisors throughout the U.S. If there was a finding that McDonald's was a joint employer, that would likely have set a precedent that all franchisors would be liable for labor violations committed by their franchisees, and it would require franchisors to bargain with workers who unionized. Therefore, an adverse decision against McDonald's posed a significant threat to franchisors everywhere who rely on the franchising model to avoid such liability.

The NLRB ruling in the McDonald's case is expected to face an appeal but franchisors can at least breathe a sigh of relief for now.

The Butzel Long Franchise Specialty Team continues to monitor developments in the franchise arena. If you have any questions about how this ruling may impact your business, or any other franchisor/franchisee related questions, please contact a member of the Franchise Specialty Team.

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