

NLRB Files Complaints against McDonalds and Franchisees as Joint Employers

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Take Away: The NLRB may be in the process of re-writing the rules to make it easier to find a franchisor liable as a joint employer with a franchisee.

Until recently, the National Labor Relations Board (NLRB) had held for roughly 30 years that franchisors cannot be liable as joint employers unless they are involved in setting wages and hiring workers. That position appears to be on the verge of a sea-change.

On December 19, 2014, the NLRB filed 13 complaints, containing 78 charges, against McDonald's USA, LLC, McDonald's USA franchisees, and/or McDonald's franchisees and their franchisor, McDonald's USA, LLC as joint employers. The complaints generally allege that McDonald's USA exerts sufficient control of its franchisees' operations to be considered a joint employer and that in response to union and other protected concerted activities, it violated the National Labor Relations Act by, among other things, engaging in discriminatory discipline, reductions in hours, and discharges, as well as threats to, surveillance of, interrogations of, promises of benefits to, and restrictions on employees relating to union activities and terms and conditions of employment.

The complaints will be heard first by Administrative Law Judges beginning in March 2015, and decisions can be appealed to the NLRB and eventually to the federal courts. As a result, it could be some time before these matters are resolved and businesses and their legal counsel have clearer guidance on the NLRB's position regarding joint employer liability for franchisors.