

Massachusetts Supreme Judicial Court Sets Joint Employer Standard for Wage Act Liability

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On December 13, 2021, the Massachusetts Supreme Judicial Court (SJC) issued a highly-anticipated opinion, recognizing the concept of joint employment under the Massachusetts Wage Act (“Wage Act”) and setting forth the appropriate test for determining when an entity may be held liable for Massachusetts wage and hour violations as a joint employer. Massachusetts courts now have clear instruction to apply the multi-factor joint employer test under the federal Fair Labor Standards Act (“FLSA”) to determine whether an entity qualifies as a worker’s joint employer for purposes of Wage Act liability.

The SJC’s decision in *Jinks et al. v. Credico (USA) LLC* involved Wage Act claims by sales employees of DFW Consultants, Inc. (“DFW”). Another entity, Credico (USA) LLC (“Credico”), subcontracted with DFW for DFW to provide regional direct sales services for its national clients. DFW salespeople brought suit against Credico, alleging that Credico was their joint employer, and therefore was liable for various violations of Massachusetts law by DFW, including independent contractor misclassification and failure to pay minimum wage and overtime in violation of the Wage Act. The questions before the SJC were (1) whether the Wage Act provisions at issue included the concept of joint employment, and (2) if so, what test the Court should apply to determine whether Credico could be held jointly liable for any Wage Act violations as the plaintiffs’ joint employer.

The SJC found that certain provisions of the Wage Act did in fact incorporate “[the] long-standing concept of joint employment.” Further, the SJC held that the FLSA joint employer test was the proper test for analyzing whether a joint employment relationship exists under the Wage Act. The FLSA test considers the totality of the circumstances of the relationship between the entity and the worker, and analyzes whether the entity in question (1) has the power to hire and fire an individual, (2) supervises and controls the individual’s work schedules or conditions of employment, (3) determines the individual’s rate and method of payment, and (4) maintains employment records for the individual. The more control the business entity has over the worker, the more likely it is that the entity may be subject to joint employer liability. The SJC reasoned that the FLSA test was appropriate because the focus of the analysis is whether the worker at issue is subject to the control of another business entity. If the business entity has the power to control the worker and significant aspects of the worker’s employment, the SJC reasoned that it would also be appropriate for the business entity to be liable for wage and hour violations.

Applying the FLSA test to the facts at issue, the SJC determined that, based on the totality of the circumstances, the plaintiffs had no reasonable expectation of proving a joint employment relationship with Credico. The SJC found that DFW – not Credico – retained the power to hire and fire its salespeople, and Credico’s overarching exercise of general quality control measures did not rise to the level of sufficient supervision and control of work conditions. Further, Credico did not determine the rate of the individuals’ pay, or maintain employment records about specific individuals in such a way that would give rise to a joint employment relationship. Since there was no joint employment relationship, Credico could not be held liable for any alleged Wage Act violations brought by the plaintiff employees.

The SJC’s decision provides clarity about the factors Massachusetts courts will consider when determining whether a business entity is a joint employer for purposes of Wage Act liability. It also assures businesses that use or provide contracted labor that proper, good-faith business relationships between companies are unlikely to expose businesses to joint employer liability under the Wage Act. Nevertheless, businesses should assess their relationships with contractors, sub-contractors, staffing agencies, and other similar entities to assess the risk of a joint employment relationship under the FLSA standard.

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