



WOULD YOU LIKE FRIES WITH THAT?

NLRB made a preliminary decision that could radically change the worker-employer relationship for contracted service providers.



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Fast food restaurateurs, hotel operators and other franchise owners from around the country arrived in Washington on Tuesday, September 16, but they were not there to order fries. They were there to voice their opposition to a July 29 decision made by the National Labor Relations Board (NLRB or the Board). In July, the general counsel of the NLRB made a preliminary decision that could radically change the worker-employer relationship for major restaurant companies as well as other types of contracted service providers. McDonald's, the Board's general counsel determined, could be held as a "joint employer" in certain complaints over workers' rights at its franchises.

The NLRB announced that it had investigated 181 charges filed against McDonald's franchisees and the parent company regarding violations in the context of employee rights protests since November of 2012. The Board found 43 of the charges to have merit, while 64 are still pending investigation. They took the investigation one step further and found that the franchisees and the franchisor could be jointly liable as employers.

If McDonald's USA is found to be a joint employer with the franchisees, it would force corporate managers to the table in collective bargaining discussions and expose them to claims of labor rights violations from workers at chain stores and businesses. Historically, McDonald's has not been subject to liability for management practices at its franchises by stating that the franchisee, and not its corporation, determines wages and working conditions in those restaurants. However, labor organizers argue that because McDonald's exerts so much control over specifics of how its franchised restaurants are run—menu, uniforms, and so on—it should be held accountable for worker's rights as well.

According to media reports, the complaints filed against McDonald's started when fast food employees waged a series of strikes in support of a 15 dollar minimum wage. Rick Hurd, professor of industrial and labor relations at Cornell University ILR School said, "When the NLRB Act was passed in 1935, the standard employer was large manufacturers with lots of employees. We didn't have these kinds of widespread franchise operations back in 1935. The law doesn't explicitly deal with them, and it's something the NLRB has shied away from." The counsel's determinations are part of an ongoing attempt to broaden the definition of joint employer, and to increase the reach of the Board over non-union workplaces.

Although this case specifically relates to a franchisor/franchisee structure, the implications are much farther reaching. Many businesses operate with the use of independent contractors and could be subject to a ruling like this. Motor carriers for example that operate with independent contractor owner-operators often have an exclusive arrangement between one specific agent and the underlying motor carrier.



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This arrangement is helpful in establishing a separate business enterprise on behalf of the fleet owner and assists with other business and liability issues as well. Until now, labor law considerations have not been a huge concern for such operations since the independent contractors are not considered employees. However, much like McDonald's, the business often times dictates when, where and how an owner-operator works. Such control could be included in this sweeping decision.

It is important to note that General Counsel's decision is not the same as a binding NLRB ruling and that it will be a long time before this issue is resolved, as McDonald's Corporation will no doubt appeal any rulings. While a final ruling may be far off, companies should understand how the determination could impact them.

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