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Court Reaffirms McDonald's Is Not Joint Employer Of Franchisee's California Employees

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The U.S. Court of Appeals for the Ninth Circuit recently reaffirmed its decision in *Salazar v. McDonald's Corp.*, in which it ruled that McDonald's cannot be held liable as a joint employer of the employees of its franchisees.

In an amended opinion issued Dec. 11, the Ninth Circuit denied the franchisee's employees' petitions both for a panel rehearing and for a rehearing en banc, and affirmed summary judgment in favor of McDonald's.

The employees had previously argued that McDonald's was their employer, in part, because it mandated the franchisee to use McDonald's point of sale and in-store processor (ISP) computer systems and, according to the franchisee's employees, the ISP system's settings caused the employees to miss out on breaks and overtime pay. In its amended order, the Ninth Circuit further rejected that argument, holding that "Plaintiffs' proposed interpretation of 'suffer or permit to work' would yield absurd results."

As the court explained: "Suppose, in this case, that the ISP system had been designed not by McDonald's but by an IT specialist and that Haynes' accountant and lawyer urged Haynes to use it. Under Plaintiffs' view, by causing wage-and-hour violations, the IT specialist, the accountant, and the lawyer would become joint employers of Haynes' employees. No California case suggests that this would be a permissible understanding of what it means for a person or entity to 'employ' someone."

The Ninth Circuit reaffirmed its decision that McDonald's cannot be held liable

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as a joint employer because it does not retain or exert direct control over franchisees' employees' wages, hours, or working conditions, and is not a common law employer since any control McDonald's asserted pertained to quality control and brand standards, which is both necessary and appropriate for franchisors.

The Ninth Circuit's *Salazar* decision is a boon for franchisors, as it confirms the significance of franchisor quality controls and brand standards. The opinion states: "Franchisors like McDonald's need the freedom to 'impose[] comprehensive and meticulous standards for marketing [their] trademarked brand and operating [their] franchises in a uniform way.'"

Time will tell whether the franchisee's employees will appeal the decision or whether California's AB 5 law, which is set to take effect on Jan. 1, 2020, and is already being challenged in the courts, will have an impact on joint employment liability. For now, franchisors remain free to exert control over their trademarks and brand without being deemed a joint employer.