

## Employers Must Take Care To Avoid Individual Liability Under The FLSA

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In *Irizarry v. Catsimatidis*, No. 11-4035, the Second Circuit Court of Appeals upheld a partial summary judgment for a class of current and former employees from Gristede's supermarkets who sued the corporation and several individuals for alleged violations of the Fair Labor Standards Act (FLSA). The class successfully obtained a ruling that owner, president, and chief executive officer John Catsimatidis was an "employer" under the FLSA and could be held personally liable for Gristede's failure to pay proper overtime compensation to its eligible employees.

The FLSA does not explicitly define what an "employer" is, but the Second Circuit and other circuits have looked at the totality of circumstances of an employment relationship on a case-by-case basis to determine who is and who is not an employer. Here, the court determined that Catsimatidis was an employer (even though he did not exercise managerial control in each store on a daily basis) because he represented himself to outside parties as the "boss," regularly visited stores, hired some of the managerial employees, sometimes signed paychecks to class members, had the power to close or sell stores, reviewed financial reports, and generally presided over the day-to-day operations of the company. Even though Catsimatidis often delegated his powers to others, what was deemed critical was that he had these powers to delegate. Because Catsimatidis had operational control, he therefore was deemed an employer under the FLSA.

Owners, officers, and high-level managers should take note of the *Irizarry* decision and remember their companies' obligation to comply with FLSA overtime requirements for eligible employees. If they are not vigilant in ensuring that these requirements are met, they may risk individual liability.

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