

NLRB Claims McDonalds Is “Joint Employer” of Franchisee Employees

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On December 19, the National Labor Relations Board (NLRB) issued 13 complaints naming McDonalds as a “joint employer” of the employees at its franchisees.

In its public statement issued the same day, the NLRB explained that the complaints (which have not yet been made public) allege that McDonalds and certain franchisees had violated employee rights by “making statements and taking actions against them for engaging in activities aimed at improving their wages and working conditions, including participating in nationwide fast food worker protests about their terms and conditions of employment during the past two years.”

The complaints stem from 86 cases, out of 291 charges filed since November 2012, which have been found by the NLRB to be meritorious.

The complaints were issued by the NLRB’s Office of the General Counsel, which earlier this year in July had indicated that McDonalds would be named as a joint employer in any such complaints.

According to its “McDonald’s Fact Sheet,” the NLRB’s investigation “found that McDonald’s, USA, LLC, through its franchise relationship and its use of tools, resources and technology, engages in sufficient control over its franchisees’ operations, beyond protection of the brand, to make it a putative joint employer with its franchisees, sharing liability for violations of our Act.” The NLRB also specifically cited, in support of its conclusion, McDonald’s “nationwide response to franchise employee activities while participating in fast food worker protests to improve their wages and working conditions.”

This development is noteworthy, because if found to be a joint employer by the courts, McDonald’s would be responsible along with its franchisees for wage, hour and other labor violations. However, it is important to remember that at this point, the joint employer position has been taken at the NLRB level and it is unclear at best whether the courts will accept the NLRB’s position.

Not surprisingly, the NLRB complaints have generated significant concern within the business and franchisor communities. Some claim that the NLRB’s position undermines decades of settled franchisor-franchisee law and relationships. McDonalds itself stated Friday that the NLRB’s actions “improperly and dramatically strike at the heart of the franchise system.”

McDonalds also described its food quality, customer service, and restaurant management assistance to franchisees as “optional resources,” apparently seeking to counter the NLRB’s assertion of McDonald’s “control” over franchisee operations.

Goulston & Storrs represents many owners and operators of franchised and non-franchised restaurant and retail concepts, as well as franchisors.

For questions about the information contained in this advisory, please contact your usual Goulston & Storrs' attorney or one of the members of the firm's Labor and Employment or Retail, Restaurant and Consumer groups listed below.

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