

CONFIDENTIAL-The information contained herein is protected by the attorney client privilege and/or the attorney work product privilege and/or the deliberative process privilege. Any dissemination of the material or the information contained herein without express written authorization of the Solicitor of Labor is strictly prohibited.

Can Franchisor (Corporate Entity) and Franchisee be Considered Joint Employers

Issue Presented for OSHA:

Whether for purposes of the OSH Act, a joint employment relationship can be found between the franchisor (corporate entity) and the franchisee so that both entities are liable as employers under the OSH Act.

Ultimate determination will be reached based on factual information about the relationship between the franchisor and franchisee over the terms and conditions of employment. While the franchisor and the franchisee may appear to be separate and independent employers, a joint employer standard may apply where the corporate entity exercises direct or indirect control over working conditions, has the unexercised potential to control working conditions or based on the economic realities. As a general matter, two entities will be determined to be joint employers when they share or codetermine those matters governing the essential terms and conditions of employment and the putative joint employer meaningfully affects the matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction.

To help OSHA reach a determination as to whether the corporate entity (franchisor) and the franchisee can be considered joint employers, the following information should be obtained. The questions are grouped with broad topics with suggested questions to help determine whether Corporate (franchisor) and franchisee are in a joint employment relationship.

I. Overall Relationship Between Corporate and Franchise:

Obtain copy of any franchise agreement and written document that addresses relationship;
How does the franchisee obtain the franchise;
What does the franchise submit to corporate;
What fee does franchisee pay to corporate (obtain fee agreement);
Does franchise pay a royalty or other compensation, for the use of corporate's trademarks and marketing system;
Does franchise have to agree to certain corporate conditions;
Does the franchise have to submit plans to corporate;
What is the interaction with corporate;
With whom does the franchise interact from corporate;
Does corporate have any ownership interest in the franchise;
Does corporate have any investment in equipment;
Does corporate select/approve location of the franchise;
Does corporate approve advertising the franchise uses;

CONFIDENTIAL-The information contained herein is protected by the attorney client privilege and/or the attorney work product privilege and/or the deliberative process privilege. Any dissemination of the material or the information contained herein without express written authorization of the Solicitor of Labor is strictly prohibited.

What rules/policies does corporate have on brand standards;
After franchise is established does corporate do any kind of review;
What kind of ongoing communications take place between the franchise and corporate;
Does franchise contact corporate for any type of assistance after the franchise is up and running;
Is the franchise separately incorporated (obtain copy of documents related to incorporation);
Does anyone from corporate visit the franchise; if so, what does corporate do during its visit;
Does corporate provide manuals detailing how a franchisee should operate its franchise, including the best way to staff a franchise or define job responsibilities;
Does corporate provide common set of operating procedures;
Does corporate create menus and/or products for franchisee to sell;
Does corporate approve signage for the franchisee to use;
Does corporate require franchise to use any specific computer system.

II. Written Documentation of Corporate Direction and Control of Franchise

a) Operation of franchise

Obtain a complete list of any and all manuals and written policies/procedures the Corporate provides to franchise;
Does corporate provide franchisee handbook;
Does corporate provide instructions/policies on purchase of materials or food, preparation of materials or food;
Is corporate involved in purchase of equipment;
Does corporate provide list of suppliers of equipment;
Does corporate recommend use of suppliers;
Is corporate involved in decisions regarding store layout, store hours, staffing requirements, number of employees per shift; positions of employees; number of managers; responsibilities of managers; job descriptions.

b) Conditions of employment

Obtain a complete list of any and all manuals and written policies/procedures the Corporate provides to franchise;
Does the corporate provide instructions/policies regarding employee orientation;
Does corporate provide an employee handbook;
Is corporate involved in setting of work hours; pay scales; determining overtime; leave policies – vacation days- sick leave; workers compensation;
Does corporate provide information to franchise about FMLA or any other worker benefits;
Does corporate provide information/policies about training employees;

CONFIDENTIAL-The information contained herein is protected by the attorney client privilege and/or the attorney work product privilege and/or the deliberative process privilege. Any dissemination of the material or the information contained herein without express written authorization of the Solicitor of Labor is strictly prohibited.

Does corporate provide information/policies about clothing, uniforms, shoes, hair covering, jewelry, etc.

III. Corporate control over the essential terms and conditions of employment of the workers at the franchise:

Does corporate provide any oversight or have any involvement in:

a) Hiring:

Does Corporate have any involvement in hiring decisions at franchise;
Are any hiring decisions reviewed by Corporate in any way review;
Does corporate provide hiring manual and policies;
Does corporate provide personnel manual handbook for any worker's, management and non-management;
Is corporate involved in any way in screening applicants for employment; selecting applicants;
Does corporate require franchisee to conduct background check of applicants.

b) Pay and Benefits

Does corporate set pay rates; have any involvement in payroll and payment of wages; does corporate have involvement in workers compensation.

c) Disciplinary Policies:

Does corporate provide franchise with disciplinary rules or policies.

d) Training

Does corporate provide franchise with training manuals or information of any sort.

e) Termination of Employees:

Does Corporate have any involvement in decisions to terminate employees at franchise;

CONFIDENTIAL-The information contained herein is protected by the attorney client privilege and/or the attorney work product privilege and/or the deliberative process privilege. Any dissemination of the material or the information contained herein without express written authorization of the Solicitor of Labor is strictly prohibited.

Does corporate in any way review decisions to terminate employees at the franchise;
Does corporate provide manuals or policies on termination of employees;
Corporate involvement in safety and health policies and practices of the franchisee
Does corporate provide any type of safety program;
If franchise has a safety program what name is on the program;
Does corporate provide any instruction/information about protective equipment the franchise should have;
Does corporate set any standards for safety training;
Does corporate have safety training for the managers.

IV. Corporate control over safety and health policies and practices at the franchisee

Does corporate provide franchisee with any type of safety program;
If so, obtain copy.
If franchise has a safety program (obtain copy) what name is on the program;
Does corporate provide any instruction/information about protective equipment the franchise should have;
Does corporate provide to the franchisee any personal protective equipment;
Does corporate set any standards for safety training;
Does corporate provide safety training for franchisee managers;
Does corporate ask for any injury or illness information from the franchisee;
If corporate visits franchisee, does corporate look at OSHA 300 logs;
Does corporate conduct any type of safety evaluation of the franchisee;
Does corporate provide any instruction to franchisee about keeping injury and illness data;
Does corporate provide any forms to the franchisee to use for investigation of accidents;
Does franchisee report any information to corporate about safety issues, including complaints from employees;
Can franchisee independently implement safety and health policies without any involvement of corporate.

DRAFT