

Joint and Successor Liability may be Imposed Against Predecessor and Successor Employers for FLSA Violations

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Employee was hired as an underwriter by mortgage company A and was immediately assigned to a training led by a representative of a mortgage company B. Shortly thereafter, employee and many of her colleagues were asked by their supervisors to fill out job applications for mortgage company B. Despite the transfer, employee performed the same duties, received the same pay and had the same supervisors as when employed by mortgage company A. Some of employee's colleagues continued to receive paychecks from mortgage company A.

When work issues arose that employee's supervisors could not address alone, the supervisors would consult with the co-owner and president of mortgage company A ("co-owner A") and the co-owner and executive vice president of mortgage company A ("co-owner B"). At some point employee asked co-owner B about overtime compensation, to which co-owner B responded that he "did not pay overtime to underwriters."

Employee quit her job at mortgage company B and filed a complaint alleging: (1) that both mortgage company A and mortgage company B were in violation of the Fair Labor Standards Act (FLSA) for failure to pay employees overtime compensation and for misclassification of employees as exempt from the overtime wage requirements of the FLSA; (2) that mortgage company B was jointly liable for mortgage company A's statutory violations and also liable as mortgage company A's successor; and (3) that co-owner A and co-owner B were personally liable for violations of the FLSA and the New Jersey Wage and Hour Law, by mortgage company A and mortgage company B.

The District Court dismissed the complaint for failure to state a claim on which relief could be granted. The Third Circuit Court of Appeals vacated the District Court's dismissal and remanded the action.

The Third Circuit found as follows: (1) the pleadings put the corporate defendants on fair notice that the alleged violations began during employee's employment with mortgage company A and persisted through her tenure with both companies; (2) the training of mortgage company A employees by a representative of mortgage company B, the abrupt and seamless integration of mortgage company A employees to mortgage company B and

the continued payments by mortgage company A to mortgage company B employees, supported employee's claim that the two companies shared authority over hiring and firing practice, a factor to be considered when trying to establish a "joint employer" relationship; (3) the federal common law standard for successor liability applied to employee's FLSA claim, as opposed to New Jersey Law, and employee's allegations satisfied the federal common law standard; (4) the dismissal of employee's claims under the New Jersey Wage and Hour Law was not appropriate; and (5) the allegations that supervisors would consult with the co-owners when they could not address issues alone, and that co-owner B told employee that he "did not pay overtime to underwriters," were enough to allow the court to draw a reasonable inference that defendants are liable for the misconduct alleged.

Failure to maintain a clear separation between predecessor and successor employers may result in joint and successor liability for violation of the FLSA and New Jersey Wage and Hour Law. Further, failure to maintain a clear separation between supervisory and executive roles may result in personal liability for violations of the FLSA and the New Jersey Wage and Hour Law.

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