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Court Holds that Franchisor is Not Employer Pursuant to the Fair Labor Standards Act

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Benjamin Orozco worked as a cook in a Craig O's Pizza and Pasteria franchise which was owned by Sandra and Arnold Entjer. Craig and Roxana Plackis owned Roxs Enterprises, Inc. ("Roxs"), which was the franchisor of Craig O's. Initially, the Entjers paid Orozco a salary of $1,200 bi-weekly. In 2007, his wages were reduced to $1,050 per week, and later, in 2011, they changed his pay to $11 per hour. Orozco quit and filed suit against the Entjers, claiming he was entitled to overtime pay and that he was not properly paid minimum wages pursuant to the Fair Labor Standards Act (FLSA). Orozco ultimately settled with the Entjers but then added as a party Craig Plackis, the franchisor. The jury rendered a verdict in favor of Orozco finding, in part, that Plackis was Orozco's employer. Plackis moved for judgment as a matter of law, which was denied, and as a result, appealed to the United States Court of Appeals for the Fifth Circuit.

On appeal, **the court reversed**, finding that Plackis was not Orozco's "employer" under the FLSA. The court relied on the "economic realities test" to determine whether Plackis (1) possessed the power to hire and fire employees; (2) supervised and controlled employees' work schedules or other conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records. The court concluded that Orozco failed to present legally sufficient evidence to establish any of these four elements. Specifically, the court emphasized that the fact that Plackis provided advice and training to the Entjers and reviewed employees' schedules did not constitute "control" over Orozco's work schedule or other terms and conditions of employment. Similarly, the fact that Plackis was aware of Orozco's salary did not demonstrate that he decided Orozco's rate or method of pay. Based on this lack of evidence, the court held Plackis could not be held liable as an employer under the FLSA.

Although this decision provides defenses to liability for franchisors, the court specifically noted that its holding does not mean "franchisors can never qualify as the FSLA employer for franchisee's employees." Accordingly, franchisors must be aware of and remain cautious regarding the Act's broad definition of what constitutes an employer.

Orozco v. Plackis, No. 13-50632 (5th Cir. July 3, 2014)

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