

Aching Joints: Franchisor Avoids Liability for Franchisee's Labor Disputes

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Any time an employer is involved in a franchise relationship, there are bound to be unique issues when legal disputes arise, particularly in the employment context. It is no longer surprising to see the names of any and all related entities captioned as the defendant in an employment lawsuit, and this includes franchisors who may have absolutely no relationship with or control over the employer's employees.

While potential exposure and liability are always a risk for franchisors, this employer-friendly decision from the National Labor Relations Board helps to set the standard for franchisor liability in the context of labor relations.

In this case, the employer Nutritionality, Inc. operates a single store in Chicago, Illinois pursuant to a franchise agreement with Freshii Development, LLC, a fast-casual restaurant franchisor. In the summer of 2014, Nutritionality terminated one employee and disciplined and terminated another employee for attempting to unionize the workforce. The employees filed unfair labor practice charges with the National Labor Relations Board (NLRB) regarding the terminations and discipline.

Region 13 of the NLRB found merit to the charges but requested advice as to whether Nutritionality was a joint employer with Freshii and/or with Freshii's franchise development agent for the Chicagoland area. The Board issued an Advice Memorandum on May 12, 2015, applying current Board law as espoused in *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 3 (Sept. 15, 2014), finding that neither Freshii nor its development agent were joint employers with Nutritionality because they did not meaningfully affect matters relating to Nutritionality's employment relationship with its employees.

Under the *CNN* standard, the NLRB will find separate entities to be joint employers of a single workforce if they "share or codetermine those matters governing the essential terms and conditions of employment." *CNN*, 361 NLRB No. 47, slip op. at 3. To establish such status, a business entity must meaningfully affect matters relating to the employment relationship "such as hiring, firing, discipline, supervision, and direction" and wages and compensation of the affected employees.

In this particular instance, the NLRB found that Freshii played no role in Nutritionality's decisions regarding hiring, firing, disciplining or supervising employees, determining wages, scheduling and/or setting work hours of the

affected employees. Freshii's control of Nutritionality's operations was limited to ensuring a standardized product and customer experience, factors that clearly do not evince sharing or codetermining matters governing essential terms and conditions of employment. Ultimately, the Board found that the relationship between the two companies centered more on protecting brand standards than involvement in the franchisee's employment decisions, human resources, and labor relations, and concluded that the franchisor was not joint employer for unfair labor practice charges.

In this case, *Nutritionality, Inc. d/b/a Freshii*, No. 13-CA-134294, 13-CA-138293, and 13-CA-142297 (NLRB, April 28, 2015), the franchisor was able to escape involvement in the franchisee's labor troubles because its franchise agreement specifically provided that it neither dictates nor controls labor or employment matters for its franchisees and their employees. Further, even though its operations manual contained mandatory and suggested specifications, standards, operating procedures and rules, they were found to be system standards aimed at protecting the brand rather than dictating labor policies to the franchisees. Franchisors should review their agreements to determine what level of responsibility, if any, it may have for a franchisee's labor and employment disputes.

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Topics

National Labor Relations Board (NLRB), Joint Employers