



IFA Business Network Meeting: Protecting Your Franchise Business Against New Employment-Related Risk

By: Michaelle Baumert – January 22, 2015

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Joint Employment – NLRB

- Current Status of McDonald's matter
- NLRB's Position on McDonald's



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David Weil, DOL Wage and Hour Division Administrator

- Role at DOL
- IFA's Position on Weil's appointment
- "Fissured Employment Relationships"
- Impact on franchising



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Minimum Wage Issues



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How to Respond to this



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The Basics: General Vicarious Liability Principles and Prevention of Franchisor Vicarious Liability

- Rights
- Representations
- Reliance
- Actual Agency
 - Right to Control the Day-to-Day Operations Test
 - Control of the Instrumentality of the Harm Test
- Apparent Agency/Ostensible Agency/Agency By Estoppel

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The Basics: Controlling Vicarious Liability in the Employment Context

- Distinguish clearly between “Recommendations” and “Requirements.”
- Avoid creating standards that will not be enforced.
- Control representations to franchisee customers and employees.
- Remember that all emails and other written correspondence will be important evidence in a vicarious liability determination.

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Controlling the Risk NOW:



Real-time Involvement in Day-to-Day Franchisee Issues

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Controlling the Risk NOW:

Real-time Involvement in Day-to-Day Franchisee Issues

- Avoid Direct Involvement or Instruction on Human Resources Issues
- Wage and Hour Errors
- Failing to Recognize Requests for “Accommodation” Covered by the ADA
- Failing to Recognize and Properly Administer Requests for Leave Covered by the FMLA or Other Laws
- Interfering with Employees Engaging in “Protected Activity” Under the NLRA
- Documentation of Employee Performance
- Workplace Harassment Issues

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Role of IFA



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Questions/Discussion

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