

Franchisors: Don't Forget About Insurance For Joint Employer Liability Claims

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Separate and apart from creating a brand and an offering that consumers enjoy, franchisors face everyday issues such as complex schemes that restrict the terms and conditions under which they may sell franchises and conduct business. In addition, under expanding concepts of joint employer liability, issues exist as to whether franchisors may potentially be sued for, among other things, employment-related claims brought by employees of franchisees.

To protect against such claims, a best practice for franchisors is to take reasonable precautions by not exerting authority or control over the franchisee's employment practices. These precautions include taking care not to retain or assume a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of a franchisee's employees.

Even the best franchisor practices, however, cannot protect against frivolous claims, which can be expensive to defend. As a next step, franchisors should consider protection through indemnification clauses under which franchisees agree to indemnify and defend franchisors from, among other things, claims asserted by the franchisee's employees.

As a further step, franchisors also should consider requiring that franchisees purchase applicable insurance – including employment practices liability insurance – under which the franchisor qualifies as an additional insured. While not all carriers offer such insurance and such insurance might be considered expensive by some, it can provide important protection to franchisors from covered franchisee employee claims.

Given the prevalence of wage and hour claims, franchisors should also consider asking franchisees to look into the availability of coverage for wage and hour claims, again with franchisors as additional insureds.

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