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LEGAL FORUM

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CHRIS J. GADANSKY
ASSOCIATE

(502) 327-5400, ext. 307
9300 Shelbyville Road, Suite 210
Louisville, KY 40222
cgadansky@mmlk.com
www.mmlk.com

Responsive 24/7
[McBRAYER]
McBrayer, McGinnis, Leslie & Kirkland, PLLC
ATTORNEYS AT LAW

TOPIC

Can a franchisor be liable for a franchisee's employee-related decisions?

ADVICE

The franchise model is predicated on the assumption that a franchisee is an independent contractor, not an employee, of the franchisor. Generally, the franchisor owns a system for operating a business and agrees to license a bundle of intellectual property to the franchisee so long as on the franchisee adheres to prescribed operating standards and pays franchise fees. Traditionally, personnel issues are allocated almost exclusively to the franchisee and, therefore, the franchisee retains sole liability for employee-related issues, such as wage or discrimination claims. In a recent matter, however, the National Labor Relations Board announced that McDonald's USA, LLC (the franchisor) could be considered a joint employer of McDonald's franchisees' employees. The decision comes in response to 181 unfair labor practice complaints that have been filed by McDonald's workers since November 2012. This ruling is just the first of many legal steps, but businesses would be wise to closely follow the McDonald's case as it has the potential to redefine the franchise business model and expose businesses to new liability.



SAMUEL H. DESHAZER
SHAREHOLDER

(502) 568-1890 | (502) 568-4878 fax
614 W. Main Street, Suite 4000
Louisville, KY 40202
sdeshazer@hallrender.com
www.hallrender.com

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TOPIC

Filing Discrimination Claims—Employees have options, but must choose one.

ADVICE

Employers are often surprised to learn that employees have many options for where they can file discrimination claims. Courts and governmental agencies often have overlapping, concurrent jurisdiction to enforce these laws. For example, a Louisville employee subjected to an adverse employment action (e.g., termination) may file a Charge with the U.S. Equal Employment Opportunity Commission (EEOC), the Kentucky Commission on Human Rights (KCHR), or the Louisville Metro Human Relations Commission (LMHRC). In addition, the employee may by-pass all of these agencies, and file a lawsuit in Jefferson Circuit Court. While each of these options is available to the complaining employee, no claim seeking relief for the same grievance(s) may be filed in another forum while the same claim of the same person is pending before another agency or court. In this manner, the employee is able to select where to bring the claim, but only gets "one bite at the apple", which is also fair to the employer.