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EMPLOYMENT LAWSCENE ALERT: WISCONSIN ENACTS LAW ON FRANCHISOR JOINT EMPLOYER LIABILITY

Although federal administrative agencies such as the National Labor Relations Board, the Occupational Safety and Health Administration, and the Department of Labor have recently pushed to expand the definition of "joint employer" under their respective laws, employers in Wisconsin can take some solace in recent legislation. Under Wisconsin Senate Bill 422, which became effective March 2, 2016, there is now a presumption that a franchisor is not an employer of a franchisee's employees for the purposes of Wisconsin unemployment insurance, Wisconsin workers' compensation, Wisconsin wage and hours laws, and Wisconsin fair employment laws. A franchisor can only be subject to liability for its franchisee's employees under those laws if 1) it agrees in writing to assume liability or 2) it exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised for the purpose of protecting the franchisor's trademarks and brand.

The law is meant to prevent franchisors who use a traditional franchisor-franchisee model from being held legally responsible for matters over which they did not exert control. Wisconsin franchisors should make sure that they are not taking any control over day-to-day operations of their franchisees, as that could expose them to liability under Wisconsin laws. Additionally, this does not impact how such franchisors would be treated under federal law, as mentioned above.