
McDonald's to Pay $3.75 Million to Settle 'Joint Employer' Class Action

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McDonald's Corp. has agreed to pay $3.75 million to settle wage-and-hour claims brought against the company and its franchisees by a class of about 800 restaurant workers at franchisee-owned establishments in California.

The Oct. 28 settlement, which still needs approval from the U.S. District Court for the Northern District of California, comes amid growing attempts to hold McDonald's liable for alleged labor violations of its franchisees as a "joint employer." The company would pay $1.75 million to plaintiffs in combined back pay, liquidated damages, and other penalties, with some of that cash going to a California labor enforcement agency to fund labor law enforcement and education. McDonald's would also pay $2 million to cover attorney fees and litigation expenses.

Michael Rubin, a partner at Altshuler Berzon, said the agreement, which marks the first time that McDonald's has agreed to pay out a settlement to a class of franchisees' workers, will provide "tremendous benefits" to the class of plaintiffs and in discouraging other companies from breaking labor law though their franchisees.

"We developed legal theories in this case that set the standard and lay the foundation for future litigation against franchisors and other companies that maintain ultimate economic control over the workplaces run by related companies," he said in an interview.

He said that in making the case, attorneys for the class developed an ostensible agency theory, under which even if McDonald's was not, strictly speaking, deemed a joint employer under California labor law, the fact that the company led workers "to believe that the franchisee was acting as its agent is enough to hold McDonald's liable."

In March 2014, a group of McDonald's workers led by Stephanie Ochoa sued both McDonald's and the Edward J. Smith and Valerie S. Smith Limited Partnership, the McDonald's franchisee that owned the San Francisco Bay area restaurants where the plaintiffs worked. The case is *Ochoa v. McDonald's*, U.S. District Court for the Northern District of California, No. 3:14-cv-2098-JD.

The plaintiffs, who are represented by attorneys at Altshuler Berzon in San Francisco and Cohen Milstein Sellers & Toll in Washington, claimed that both McDonald's and its franchisee violated California labor law in a litany of ways, including by failing to pay workers overtime and provide rest and meal breaks.

The settlement agreement puts the fast-food giant on the hook for damages, plus attorney fees and cash for a California labor enforcement agency to pursue more cases. McDonald's has also agreed to injunctive relief, including creating new wage-and-hour training materials.

McDonald's and its attorneys at Quinn Emanuel Urquhart & Sullivan and Jones Day did not immediately respond to requests for comment. But McDonald's representative Terri Hickey told the Associated Press in a statement that McDonald's "reconfirms" that it isn't a joint employer of the plaintiffs. She noted that the company decided to settle the case to avoid further costs and disruption.

Although the *Ochoa* case may be almost over, McDonald's still faces joint employer liability on another front: the National Labor Relations Board. Using a new joint employer standard developed in a 2015 case that requires only "indirect control" of one company over another to create joint liability, the NLRB is in the middle of deciding whether McDonald's can be held liable for allegedly retaliatory actions that franchisees may have taken against striking restaurant workers.

Correction: *An earlier version of this story misidentified the offices of attorneys from Cohen Milstein Sellers & Toll representing the plaintiffs against McDonalds Corp. as Silicon Valley and Chicago. They are based in Washington, D.C.*

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