



The Cheesecake Factory wage theft case

A review of The Cheesecake Factory decision and its impact on wage and hour claims

By: Ann M. Monoscalco

Can a company be held liable for alleged wage violations that are not associated with their direct employees? Surprisingly, yes.¹ While the Fair Labor Standards Act (“FLSA”) creates basic wage and hour protections, it is important to remember that the federal law is a floor, not a ceiling. The Cheesecake Factory Wage Theft Case highlights a likely overlooked source of potential wage and hour claims – state laws. States are free to create higher standards to protect workers, and many have. With this in mind, could we see an increase in wage and hour claims? Only time will tell.

Background: The Cheesecake Factory Case

On June 11, 2018 the California Labor Commissioner’s Office found The Cheesecake Factory Restaurants, Inc. liable in a \$4.57M wage theft case that underpaid 559 janitorial workers managed by Magic Touch Commercial Cleaning. Americlean Janitorial Services Corporation, which was The Cheesecake Factory’s janitorial contractor that subcontracted the work to Magic Touch Commercial Cleaning, was also liable for the wage theft which occurred at eight California locations. Broken down, the companies owe \$3.94M to 559 employees in back wages, overtime and penalties. Additionally, the companies also have to pay \$632,750 in civil penalties². How is it possible for a company, in this case, The Cheesecake Factory, to be held liable even though the janitorial workers are not their direct employees? Individual state laws were in place to impose a portion of the liability on them.

The FLSA: Joint employer liability and state laws

The FLSA was enacted in 1938 “to provide for the establishment of fair labor standard in employments in and affecting interstate commerce, and for other purposes.” 29 U.S.C. § 8. It requires employers to pay covered non-exempt employees at least the federal minimum wage and overtime pay at one-and-one-half-times the “regular rate” of pay. If there are violations of these standards but the impacted employees are not direct employees of the company (e.g. the janitorial workers hired through a contractor in The Cheesecake Factory case) a determination must be made as to whether the company and contractor are “joint employers” subjecting both entities to potential back payments and fines. However, unfortunately, the FLSA does not have a bright-line rule for when a company could be found to be a joint employer with another company so the determination has been left up to the courts.

Interestingly, The Cheesecake Factory was not found to be a joint employer. Instead, it was held jointly liable as a result of two specific California laws. The citations were issued under California Labor Code Section 2810.3 that went into effect on January 1, 2015. This law expanded the liability of client employers that obtain workers through temporary agencies or other labor contractors. The law requires that a client employer who obtains workers through an agency to share in the liability for any wage and workers compensation.

Furthermore, there is a 2016 California law stating that businesses that contract for services in the property services industry, which includes janitorial work, are jointly liable for any unpaid wages, including interest.³

Many states also have their own wage and hour laws and, while some are structured similarly to the federal rules, others apply more stringent requirements/criteria. Employers should take note: Although you are adhering to the FLSA, you may not be in compliance with state requirements. Moreover, while the Trump Administration has taken several actions to reduce the regulatory burdens imposed on companies in the U.S., states and local jurisdictions are filling in the gaps and passing more employee-friendly labor and employment laws. This will undoubtedly lead to confusion, as employers will have to determine which law (federal or state) they have to comply with, especially if the company is accustomed to setting policies at the national level. Clearly it is critical that employers need to understand the aspects of the relevant laws to maintain compliance and that they seek guidance from counsel and industry specialists to prevent mistakes and simplify their processes.

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Source

¹ Zaller, Anthony. "Southern California Restaurant hit with \$4.57 million citation by Labor Commissioner." *California Employment Law Report*. June 14, 2018. <https://www.californiaemploymentlawreport.com/tags/cheesecake-factory/>

² California Department of Industrial Relations, California Labor Commissioner's Office. "Labor Commissioner's Office Cites Cheesecake Factory, Janitorial Contractors More Than \$4.5 Million for Wage Theft Violations." June 11, 2018. <https://www.prnewswire.com/news-releases/labor-commissioners-office-cites-cheesecake-factory-janitorial-contractors-more-than-4-5-million-for-wage-theft-violations-300664150.html>

³ Masunaga, Susan. The Cheesecake Factory held jointly liable with contractor for \$4.2 million in janitorial wage theft case." www.latimes.com. June 11, 2018.

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WTW-NA-2018-WTW86179

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