



## OUR INSIGHTS

### Louisiana Legislature Ensures Franchisees Are the Sole Employers of Their Workers

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The Louisiana legislature recently passed Act 404 of the 2015 legislative session, clarifying that in most circumstances franchisees are the sole employers of their employees. The bill was signed by Governor Bobby Jindal on July 1, 2015, and went into effect on August 1, 2015.

To determine whether a franchisee's employees are also employees of the franchisor, courts often use an "economic reality" test. Under that test, if the franchisor possesses the power to hire and fire employees, supervises and controls employee work schedules and conditions of employment, determines rate of pay, and maintains employment records, then the franchisor would be deemed an employer of the company. See *Orozco v. Plackis*, 757 F.3d 445 (5th Cir. 2014).

Act 404 amended Louisiana Revised Statutes 23:921, the statute governing noncompetition agreements, to include the following:

Neither a franchisee who is party to a franchise agreement...nor an employee of the franchisee shall be deemed an employee of the franchisor for **any purpose** [emphasis added].

The statute provides that a voluntary agreement between the U.S. Department of Labor and an employer will not be used by any Louisiana state agency, including the judiciary, in determining whether an employee of a franchisee is also considered an employee of the franchisor.

The statute appears to codify the "economic reality" test described above by indicating that the franchisee and franchisor may only be deemed joint employers if the two entities "share or co-determine" matters concerning the essential terms and conditions of employment (i.e., hiring, firing, discipline, supervision, and direction).

Although the new provision was (perhaps unartfully) inserted into the statute governing noncompetition agreements, the phrase "for any purpose" appears to indicate that this configuration of the employee/franchisee/franchisor relationship may extend beyond noncompetition agreements.

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Katie Pizzini graduated from Loyola University New Orleans College of Law in 2011, and joined Ogletree Deakins after over three years' experience litigating cases on the plaintiff side. While attending law school, Katie was Selection Chairman on the Moot Court Board, a competitor on the Worker's Compensation Moot Court Team, and a *Loyola Law Review* Member. She graduated *magna cum laude*, and was a William L. Crowe Scholar.

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