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### **PLAINTIFF MUST ESTABLISH JOINT-EMPLOYER STATUS WITH FLCs**

The Fifth District Court of Appeals recently affirmed a trial court's decision to deny class certification to an agricultural worker seeking to include farm labor contractor ("FLC") employees as part of a putative class in *Cruz v. Sun World Intl.* (2015) F069719. In denying the class certification, the Court found that the Plaintiff failed to establish that the FLC was a joint-employer with the company and that FLC employees were not proper to include in the same class as direct-hire employees.

In *Cruz*, the plaintiff was a direct-hire agricultural worker who alleged several wage and hour violations against the company on behalf of himself and all other similarly situated employees, including both direct-hire and FLC employees. Plaintiff claimed that all of the violations stemmed from a common company practice where the company would schedule shifts and breaks for workers and would pay workers according to that schedule, regardless of the actual time worked. The plaintiff asserted that the company and the FLCs were joint-employers and moved to certify all direct-hire and FLC employees as a single class for a class action lawsuit. The company argued that they were not joint employers with the FLCs and denied that they had violated any wage and hour laws.

The trial court held that the plaintiff has a burden to prove joint-employer status between the FLCs and the company prior to the certification of the proposed class to determine if the class was ascertainable, a necessary requirement in determining if a class action is appropriate. Because the plaintiff failed to produce evidence to support his assertion that the company and the FLCs were joint-employers, he failed to meet the burden and class certification was denied.

On appeal, the plaintiff contended that the issue of joint-employer status went to the merits of the claim and was improper for the trial court to decide prior to class-certification. The appellate court rejected this argument. The court agreed with the trial court that in order to determine the issue of ascertainability of the class, the court must determine whether the company and the FLCs were joint-employers. They affirmed the decision of the trial court to deny class-certification based on the plaintiff's failure to establish that the Company and FLC were joint-employers.

#### **What This Means for Employers:**

The appellate court's decision establishes that a plaintiff seeking to include FLC employees in a putative class against an employer has an affirmative duty to prove joint-employer status rather than merely assert it. A finding of joint-employer status with an FLC will subject a company to record keeping requirements, including the maintenance of contact information,

social security numbers, payroll, and other information, for both their direct-hire employees and those employed by the FLC.

This case highlights the importance of understanding the business relationship employers have with FLCs. Employers must be aware of their potential joint-employer status and review any existing contracts with FLC employers to determine potential liability. Employers should also ensure the FLCs they work with are providing the required information to them and following applicable California labor laws.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 or toll-free at (888) 322-2573, for individual responses to questions or concerns regarding any given situation.*