

## Could Your Business Be a Joint Employer Without Knowing It?

**Sarah Sawyer:** Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger both Attorneys at Offit Kurman, and today we are talking about joint employment. When you're a business and you hire an employee, obviously we're a law firm, we hire a lot of lawyers.

We hire a lawyer directly and they're our employee. That can be pretty straightforward and it's pretty clear that person's our employee. And we're employees of the law firm. But there are situations where who is employing someone might be a little less clear.

Where someone might have more than one employer that is responsible for them from a legal perspective. And this comes into play when we're looking at who's responsible to pay wages and who might have certain liabilities as it relates to other types of laws as well.

So what are some things that people should be thinking about in the joint employer context, Russell, when does this occur? And what do people need to be [00:01:00] considering in this context?

**Russell Berger:** The main risk associated with joint employment is that you're on the hook for the employee's wages.

Even though you might not be the on paper traditional employer, you still have those obligations responsibilities in the wage context, exposure to multipliers on damages and fee shifting and all that. We see it probably most commonly in the context of joint employment within one ownership group, but with different companies.

So for example, somebody owns, multiple different locations within the same general operation, but they're not tight in terms of who works for which entity. Sometimes you see that because people work 30 hours at location A 30 hours at location B, and the lines get so blurred that both entities are really employers.

As a result, the person's worked 60 hours, 20 of which are overtime, but they don't get paid overtime because they're somewhat separate. That's where we see some of that risk. Obviously that's bad for other reasons too, from the business owner standpoint because if you create different entities best to silo them, there's ways to do [00:02:00] labor sharing agreements.

There's ways to make this more organized and cohesive and achieve your goals better. But it requires some thought and some planning. We also see joint employment in the context of contracting, franchising, staffing. When you hire somebody through a staffing company, who's the employer?

Be it, from the standpoint of the employee who needs to get paid their wages, it could be both. So there's a lot of different situations where it can come up and in those situations you want to make sure that the employee is getting paid properly so the employee doesn't turn around and try to put you on the hook for it.

**Sarah Sawyer:** One of the things, as far as preparedness that you mentioned that can be really frustrating in the joint employer context, is if you don't realize that the joint employment applies, you might end up with overtime obligations you didn't know you had because you didn't think they were working overtime because you thought the entities were considered, separate or in the second context that you just mentioned.

Maybe the one entity is really in control of the day to day or most of the things that are going [00:03:00] on. And the second entity doesn't realize that they're also an employer. They don't have much say in what's going on. And then all of a sudden, they have this obligation they didn't realize they had and they could have avoided it had they realized that they were also in it.

They may have gotten more involved in the terms of employment and what was going on a day-to-day basis. No one likes a surprise, right? In these circumstances, you'd rather do the analysis, given a chance in any of the contexts that you're mentioning, whether it be covering contracting, franchise whether it be the first situation you described, multiple entities maybe with similar ownership. All of those situations, anything that is triggering that there could be a joint employer situation. You're better off to be able to plan ahead of time, how that's gonna impact the business and how to offset some of that risk and liability than to all of a sudden realize that you're in that situation down the road when there is a wage and hour obligation.

because that could be really costly.

**Russell Berger:** Another quick reminder is are you sharing employees? If somebody else is on paper, they're the [00:04:00] employer are their employees working in your business? And vice versa. And if so, how are you allocating who's responsible for what, how are you ensuring that the other person does or the other business does what they're supposed to do?

There are answers to all these questions, the important thing is to recognize and ask it early.

**Sarah Sawyer:** Yeah, very good point. Well, thank you Russell, and we'll see you next time.

**Russell Berger:** Thanks Sarah.