

Workplace Rules

The Information Maryland Local Government Employers Need to Know

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THE FOURTH CIRCUIT FINDS JOINT EMPLOYER STATUS UNDER TITLE VII – YOU MAY FIND YOURSELF THE EMPLOYER OF ANOTHER ENTITY’S WORKER

In *Butler v. Drive Automotive Industries of America, Inc., et al.*, No. 14-1348 (4th Cir. July 15, 2015), the Fourth Circuit Court of Appeals, the federal appellate court that encompasses Maryland, ruled that two distinct entities may be a “joint employer” under Title VII of the Civil Rights Act of 1964 (“Title VII”). The Court also adopted a “hybrid” standard for analyzing joint employer status under Title VII.

Question: Can an employee have more than one employer under Title VII of the Civil Rights Act of 1964?

Answer: Yes.

The Facts of the Case

Brenda Butler worked for a temporary staffing agency, ResourceMFG, and provided services at a Drive Automotive Industries (“Drive”) factory that manufactured automobile parts. Employees of ResourceMFG regularly performed manufacturing duties at Drive’s facility alongside Drive employees, parked in

a separate lot reserved for ResourceMFG employees, wore uniforms provided by ResourceMFG, and ResourceMFG maintained their payroll.

Butler alleges that while she worked for ResourceMFG at the Drive facility, she was sexually harassed by Drive employee, John Green. She allegedly complained to both ResourceMFG’s onsite representative and Green’s supervisor at Drive, to no avail.

On December 19, 2010, Butler refused to operate a piece of machinery as instructed by Green. In response, Green allegedly told Butler if she did not run the machinery, her assignment was ended and called her “Big Booty Judy.” When Butler objected to this comment, Green told her that she could be easily fired. Butler reported the incident to Green’s supervisor at Drive and, in response, the supervisor requested ResourceMFG to terminate Butler. A few days later, Green allegedly called Butler and implied that he could save her job if she performed a sex act. She refused. ResourceMFG terminated Butler, a few days after the alleged conversation with Green.



The Fourth Circuit's Legal Analysis

An "employee" is defined in Title VII as an "individual employed by an employer." Under Title VII, an "employer" is a "person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person." The Fourth Circuit began its analysis by concluding that a worker may have multiple "employers" under Title VII and may be jointly employed by two discrete entities.

In order to determine joint employer status, the Fourth Circuit adopted the "hybrid" test which considers both the common law principles of agency and the economic realities test. Under the "hybrid" test, the common law element of control is the most important factor to be considered, but it is not dispositive. A court also should look to the following factors to determine joint employer status: 1) authority to hire and fire the individual; 2) day-to-day supervision of the individual, including employee supervision; 3) whether the putative employer furnishes the equipment used and place of work; 4) possession of and responsibility over the individual's employment records, including payroll, insurance and taxes; 5) the length of time during which the individual has worked for the putative employer; 6) whether the putative employer provides the individual with formal or informal training; 7) whether the individual's duties are akin to a regular employee's duties; 8) whether the individual

is assigned solely to the putative employer; and 9) whether the individual and putative employer intended to enter into an employment relationship.

The Fourth Circuit emphasized that while none of the nine listed factors are dispositive, the first three listed factors are most important. The Court also noted that the factors may be modified to the specific industry context.

In applying the "hybrid test" to the facts of the case, the Court concluded that the district court incorrectly ruled that Drive was not Butler's joint employer. Specifically, the Fourth Circuit concluded that Drive exhibited a high degree of control over Butler's employment, including the decision to terminate her, Drive supervisors handled the day-to-day supervision of Butler, Drive and ResourceMFG employees worked "side by side," performed the same tasks and used the same equipment. Additionally, Butler produced the goods that were the core of Drive's business – automobile parts. It ruled, as a matter of law, that Drive was Butler's joint employer and, therefore, potentially liable for the alleged harassment perpetrated by Green.

The Practical Implications of the Butler Decision

The issue of joint employer may arise in any context in which a worker for one entity provides services on a putative employer's premises or in conjunction with the putative employer's regular employees. In these instances, you should analyze the factors set forth in *Butler* to determine if there are steps that should be taken in the relationship to



minimize a finding of joint employer status. Avoid the assumption that simply because another entity issues the worker's paycheck, that your entity is not the worker's employer. Moreover, and more importantly, you should take steps to eliminate conduct that may violate Title VII in your workplace, to reduce exposure in the event that a joint employment relationship is found to exist.

This case is very important and is available for reading and downloading at:

<http://www.ca4.uscourts.gov/Opinions/Publiched/141348.P.pdf>

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