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The Changing Landscape of Joint Employment in Agriculture

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Joint Employment & Joint Responsibility: Key Questions

- What is “joint employment?”
- Am I a “joint employer?” Are my clients “joint employers” of my employees?
- How do recent changes in the law and recent court decisions affect whether contractors and clients are “joint employers?”
- Am I a Farm Labor Contractor under California law?

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What is "Joint Employment?"

- Generally speaking, employees can have more than one employer at any one time.
- Each "joint employer" may be responsible for some, or all, of the obligations of an employer under California and federal law.
- Courts sometimes take a posture of broadly defining employee protections to serve the protective purpose of worker protection laws.

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Court Decisions & a Recent Change in the Law

- *Martinez v. Combs* (2010)
- *Torrez-Lopez v. May* (1997)
- *Arredondo v. Delano Farms* (2013)
- Vicarious Liability for Labor Contractor's Violations (AB 1897)

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Martinez v. Combs

- The plaintiffs—Martinez and his co-workers—harvested strawberries for their employer, Munoz & Sons.
- Munoz & Sons sold their strawberries to Combs and Apio.
- Munoz & Sons went into bankruptcy and was discharged from responsibility for their unpaid wages.

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Martinez v. Combs

- Looking elsewhere to recover their unpaid wages, the plaintiffs sued Combs and Apio, distributors and merchants of fresh-harvested strawberries grown by Munoz & Sons, alleging they were their employers per Industrial Welfare Commission Order No. 14, covering agricultural employment.
  - (IWC Order 14 Section 2(b): "Employ" means to engage, suffer or permit to work.")
- Because (the plaintiffs claimed) Combs and Apio were their employers, they were responsible as employers under the California Labor Code for their unpaid wages.

Martinez v. Combs

- The court noted that under the IWC's definition, "to employ" has three alternative definitions:
  - To exercise control over wages, hours or working conditions;
  - To suffer or permit to work;
  - To engage, thereby creating a common-law employment relationship.
- The Court agreed that at least part of the IWC's definition of "employ" applied to the plaintiffs' claim:
  - i.e., that they were "suffered or permitted" to work.
- The question was: by whom?

Martinez v. Combs

- The court rejected as unreasonable the application of "suffer and permit" to the actions of Combs and Apio as misapplication of the idea – therefore defendants did not suffer or permit the farm workers to work.
- Merely benefiting from the work of others doesn't make one their employer.

Martinez v. Combs

- The court also ruled that Combs and Apio were not the plaintiffs' employers because they did not have control over the workers' wages, hours or working conditions.
- The payment provisions in their sales contracts with the plaintiffs' employer did not mean the defendants controlled the workers' wages.

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What does *Martinez v. Combs* Mean?

- California uses the specific definition of "employ" in IWC Order 14.
- Merely deriving some benefit from another's work does not mean you "suffer or permit" that person to work.
- To "suffer and permit" entails some measure of control, e.g., to hire and fire, set wages and times and places of work.

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Now Compare *Martinez* with *Torres-Lopez* and *Arredondo*

- Different fact patterns.
- Different relationships between the employees, the grower, and the FLC allowed the courts in *Torres-Lopez* and *Arredondo* to find a dependency relationship among all three.

Torrez-Lopez v. May

The Court held a grower was a joint employer of an FLC's employees for both FLSA and MSPA purposes because:

- The grower exercised significant control over working conditions, specifically:
  - ➢The overall harvest schedule

Torrez-Lopez v. May

- ➢Number of workers needed
- ➢When the harvest would start
- ➢Non-harvest days

- Grower exercised some power in setting pay rates
- Grower had an ownership interest in the premises and equipment
- Collective effort of the workers in harvesting the crop was an integral part of grower's business

Arredondo v. Delano Farms

Court held the FLC was an independent contractor, but Delano was still a joint employer of the FLC's workers:

- Delano didn't control employment conditions, but did influence workers' wages to benefit from the reputation of being an "employee-friendly" company.
- The work of the FLC's employees required no technical knowledge or skill, was integral to Delano's business operations, and was done entirely on Delano's land.

Arredondo v. Delano Farms

- The contract terms between Delano and the FLC were essentially identical to others in the industry and not unique, meaning the FLC could be exchanged for any other FLC.
- The workers' managerial skills (or lack thereof) would not affect the workers' opportunity for profit or loss.

In sum, the court determined these factors showed sufficient dependence on the part of the workers on Delano to make it the joint employer of the workers under FLSA and MSPA.

Arredondo v. Delano Farms

- The court also found that Delano and the FLC had set the workers' rate of pay while negotiating their contract.
- Thus, Delano had the power to set the employee's rate of pay, satisfying IWC Order 14's test of control of wages, hours or working conditions, making Delano a joint employer under California law as well.

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What do Torres-Lopez & Arredondo Mean?

- Courts will look to the "economic reality" of the relationship between a grower and FLC.
- If the grower exercises significant control over wages and working conditions, there's a good chance the court will find a joint employment relationship.

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Labor Contractor Liability (AB 1897)

AB 1897 is a sweeping new law that expands the liability of business entities that contract for labor.

The purpose of the law is to hold companies accountable for wage-and-hour violations of 3rd party providers of workers when those 3rd party providers provide workers to a "client employer."

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Who is covered by AB 1897?

- Any "client employer," which is defined as a business entity with 25 or more workers, at least six of whom are provided by one or more labor contractors to perform labor within the entity's usual course of business.
- AB 1897 will apply to agricultural employers who use farm labor contractors, farm management companies, vineyard service companies or other labor contractors to supply workers.

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What Does AB 1897 Do?

- Imposes civil legal responsibility and liability on a client employer for payment of wages or failure to secure workers' compensation coverage by a labor contractor for workers supplied by the labor contractor to the client employer.
- A client employer may contract for indemnification from the labor contractor for the labor contractor's failure to pay wages or secure workers' compensation coverage.

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What Does AB 1897 Do?

- A client employer may not shift its own legal duties or liabilities under workplace safety laws to the labor contractor.
- Requires a client employer or labor contractor to provide to any state enforcement agency any information within its possession, custody or control to confirm compliance with applicable state laws.

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Complying with AB 1897

Business entities that may find themselves securing labor from 3rd party sources will want to determine what efforts may be made to limit the liability exposure for a labor contractor's wage-and-hour violations or failure to secure workers' compensation coverage.

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Complying with AB 1897

Additionally, business entities may consider:

- Reviewing existing contracts for labor or services to determine what contracts may fall within the scope of "usual course of business." For those contracts that qualify, contact those contractors to obtain assurances of their employment-law compliance.
- Including legal protections for wage-and-hour violations and workers' compensation coverage, including duty to defend and/or indemnification provisions, in their agreements with labor contractors.
- Limiting reliance and use of contracted labor or services and determine internally where efficiencies can be made with regard to workload or hiring of additional employees.

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What Does AB 1897 Mean?

- The “last nail in the coffin” for the handshake deal.
- If written agreements between a farmer/rancher and a farm labor contractor was a “best practice” before, AB 1897 makes a written agreement the best possible protection for both parties.
- AB 1897 raises the stakes for both the farmer/rancher and the FLC to be in scrupulous compliance with the law.

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Questions? Comments?

Thank you for being a great audience!

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