

Individual Liability for Wage and Hour Claims



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It sometimes gets lost in the shuffle, but individual owners also may be liable for damages in wage and hour claims just as much as the company. Take the recent case of *Torres, et al. v. Gristede's Operating Corp., et al.*, 04-CV-3316 (S.D.N.Y. Sept. 9, 2011). Gristede's is a large supermarket chain located in New York City. Torres is supervisor who brought a class action against the supermarket alleging that he was not paid overtime.

The parties settled the matter, but the company was subsequently unable to make the payments under the settlement. The plaintiffs then reinstated their action against the company's CEO, who was also a named defendant in the complaint. The plaintiffs argued that the CEO was an employer under the law and the court agreed. The U.S. District Court for the Southern District of New York held that "employer is defined broadly [under the Fair Labor Standards Act] to include any person acting directly or indirectly in the interest of the employee in relation to the employee" and that "person includes individuals, so that individuals may be held liable or responsible for violations of the law by a corporate employer."

Although the CEO asserted that the economic reality was that he was not an employer, the Court found that the CEO had full operational control over the company and was the one person who was clearly in charge of the company. It did not help the CEO that in an unrelated lawsuit he submitted an affidavit describing that he was the sole owner of the company and essentially ran the entire operation.

Accordingly, any damages under the action are owed not only by the company, but by the CEO for his role as an employer.

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