



# When is a Mid-Level Manager Personally Liable for Wage Violations? 3 Steps for Employers After Recent Appeals Court Ruling

Insights

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A hotel manager was recently held individually liable for violations of federal wage and hour law under a broad definition of “employer.” Although the ruling applied to a unique set of facts – including that the manager was the hotel owner’s son – the June 20 decision from the 11th U.S. Circuit Court of Appeals contains some valuable lessons and reminders for all employers. Here’s what you need to know about this ruling and three steps you can take to prevent wage and hour violations.

## What Happened?

**Clerk was partially paid through lodging.** A front desk clerk worked for nearly a decade at various Alabama hotels operated by the same owner and his son. The clerk primarily worked night shifts, averaged 62 hours per week, and was compensated with monthly paychecks and onsite lodging.

**Clerk sued hotel entity, owner, and son for wage violations.** When the relationship between the parties soured, the clerk sued the company, the owner, and his son, alleging that he was not paid the federal minimum wage or overtime premiums in violation of the Fair Labor Standards Act (FLSA).

**Federal wage law broadly defines “employer.”** The FLSA allows employees to sue for such violations and broadly defines “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee.”

**Son says he’s not an employer.** The hotel owner’s son argued that he was not an “employer” because he was not an owner, did not have any control or decision-making authority over the clerk’s compensation, and did not exercise control over the finances of the hotels. Rather, he claimed to be a wage-earning employee of the hotels who also happened to live onsite, just like the front desk clerk.

**Court finds son individually liable.** Ultimately the courts found that the clerk was not paid properly under the FLSA and that the father and son were both individually liable. While the company and its owner might more obviously fall under the definition of “employer,” we’ll explain in more detail below why the federal district court in Alabama and the 11th Circuit included the owner’s son.

## The Ruling and Reasoning

The 11th Circuit pointed to the following facts when finding that the son met the definition of “employer”:

- He handled the day-to-day operations at the Alabama hotels.
- He lived at one of the properties and supervised the clerk’s daily job activities.
- He testified that he oversaw things “day-to-day” while his father would often work from Florida.
- He gave the clerk tasks and set work schedules.
- He had control over the company’s finances in a way that other company employees did not. For example, he was the only employee other than his father who could sign paychecks, and there is no evidence that any other employee was involved in discussions about rental rates or could adjust those rates except for the son.

“Although owners and corporate officers are more susceptible to personal liability because they are more likely to exercise operational control, the broad definition of an employer under the act does not limit individual liability to officers and owners,” the 11th Circuit explained. “We must consider the circumstances of the whole activity.”

The court pointed to precedent extending individual liability to people who control significant aspects of a company’s day-to-day functions.

### **What Are the Key Takeaways?**

**Individual liability is not limited to upper management and executives.** Essentially, an “employer” is anyone who has some direct responsibility for the supervision of an employee or control over significant aspects of the company’s day-to-day functions. This can include making regular visits to the business’s facilities, having an impact on employee salaries, controlling the business’s purse strings, or overseeing business operations.

**Broad applicability.** Under this standard, office managers, human resources employees, and accounting staff that have control over employee compensation could be individually liable for FLSA violations by their own employer.

**But note the unique circumstances.** The hotel owner and his son argued that this ruling would make all middle managers individually liability under the FLSA no matter how removed they are from upper management. The 11th Circuit, however, noted that the son in this case “is not in the same position as the average middle manager.” Instead, he:

- worked with his father regularly and consulted him on company financial matters, such as compensation and room rental rates; and
- took the reins when his father was unavailable to attend to company matters.

**Employer two ways.** The 11th Circuit explained that the son’s status as the clerk’s day-to-day manager is only one reason that he is an employer under the FLSA. “His involvement in company operations is another. And his control is both substantial and related to the company’s obligations under the act.”

### **3 Steps Employers Can Take to Reduce Wage and Hour Liability**

Employers across the country – and especially those in the 11th Circuit (Georgia, Florida, and Alabama) – should consider taking these three steps to ensure they are compliant with the FLSA and have reduced the risk of mid-level managers and supervisors being held individually liable.

#### **1. Educate Managers on the Risks**

Employers can likely increase buy in from managers and supervisors on the importance of wage and hour compliance by educating them on the potential risk of individual liability. You should communicate the FLSA “employer” standard to your managers, supervisors, and owners — and consider providing annual training to ensure they understand the possible impact of their actions under the FLSA.

#### **2. Encourage Timely Reporting of Any Potential Errors**

As part of your wage and hour compliance program, you should require employees to report any discrepancies in their paychecks. By encouraging timely reporting, you can reduce the risk of receiving an unforeseen wage and hour lawsuit years down the line. Managers should also be empowered to provide feedback to the leadership team regarding potential wage and hour issues so they can be remedied before they become a bigger issue.

#### **3. Regularly Review Your Pay Practices**

You should take steps to ensure compliance with the FLSA’s requirements and assess your company’s unique FLSA issues. This includes getting control of timekeeping processes, reviewing non-exempt classifications, and regularly reviewing how exemptions are applied. Remember that it’s best to prevent violations and claims before they occur. Consider working with experienced legal counsel to review your wage and hour procedures and make any adjustments *before* a lawsuit or investigation hits. Be sure to account for the many layers of federal, state, and local laws impacting your pay practices.

### **Conclusion**

We will continue to monitor developments in wage and hour litigation, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#) or on our [Hospitality Industry Team](#).

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