

Jani-King Must Face Worker Classification Suit by Labor Dept. (1)

By Jon Steingart

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- Franchise owners may be able to get wage protections
- Separate 300-member class action under way

Jani-King of Oklahoma Inc. can't sweep away a lawsuit by the Labor Department alleging it underpays janitors, the U.S. Court of Appeals for the Tenth Circuit held.

The ruling validates the Labor Department's legal theory that a company can't evade federal wage law requirements by recruiting a franchisee workforce. The DOL alleged in the lawsuit that the cleaning service franchise required individuals who wanted to work for it to incorporate small businesses, and it then contracted with the businesses rather than with individuals.

"This is a common scam in the cleaning industry," Shannon Liss-Riordan, a partner with Lichten & Liss-Riordan P.C. in Boston, who's litigated several cases against Jani-King, told Bloomberg Law. "Companies call themselves franchisors and then hide behind the franchise label to deny their workers rights." Liss-Riordan isn't involved in this case.

The Tenth Circuit reversed a lower court decision that dismissed the agency's case. The lower court held that corporate entities, like the franchisees Jani-King hired, aren't eligible for federal wage protections.

The Third Circuit in 2016 let a class action with about 300 franchisees who said they were incorrectly classified as independent contractors proceed. If they were correctly classified as employees under Pennsylvania law, Jani-King would be required to pay benefits the workers haven't received and would be barred from charging franchise fees, the workers say. Liss-Riordan represents workers in that case, which is ongoing.

Jani-King, its attorney, and representatives for the DOL didn't immediately respond to requests for comment.

The case is *Acosta v. Jani-King of Okla., Inc.*, 2018 BL 363649, 10th Cir., No. 17-6179, dismissal reversed 10/3/18.

(Updated with additional reporting.)

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