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Joint Employers: The Nevada Casino Operator's Role in Regulating Labor Conditions of Venue Employees

From the perspective of tourists, one would think that every venue of a casino is owned and operated by the casino. The entire staff is friendly, helpful, and able to direct you to your desired location—they all offer the same high quality guest service. It is easy to assume every employee is an employee of the casino. Restaurants, pool day clubs, and nightclubs are advertised throughout the hotel and casino resort and throughout the city with the casino's trademark. It is logical to make the assumption that all the venues within a resort are under the control of the casino operator. In order to own a casino operators must apply for a gaming license. In the past, gaming licensees in fact owned and operated all or most of their non-gaming venues. Currently, it is common that gaming licensees often lease property to third parties to own and operate the non-gaming venues.[1]

Third parties may consist of restaurants, retail shops, bars, pool day clubs and nightclubs. These third parties employ their own staff and operate their own venues—similar to a shopping mall where businesses lease spaces within the mall. Gaming licensees do not want to be liable for the actions of the third parties therefore they draft contracts to protect the casino from liabilities; expressly stating the gaming licensees and the lessees are not "joint employers." The framework is that the gaming licensees are the lessors and the venue operators are the lessees, thus the gaming licensees are not liable for the actions of the venue operators. Gaming Control Board member Randy Sayre, once said at an informational seminar, "You could have the

[1] Glenn Light, Karl Rutledge and Quinton Singleton, *Keeping Compliance in Check*, GAMING MANAGEMENT, Nov. 2009, http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf.

tightest contract on the face of the Earth . . . but if the property is not willing to take the necessary steps to enforce their rights, that's an issue [for the board]."[2]

For example, N9NE Group owned and operated several restaurants and nightclubs in the Palms Hotel and Casino from 2001 to 2011.[3] N9NE Group was bought out of the venues in 2011 to settle litigation between the casino owner, George Maloof, and N9NE Group co-owner, Michael Morton.[4] As discussed further in this reading, the Palms Hotel and Casino was fined over $1 million by the Gaming Control Board for illegal activity conducted by employees of several nightclubs owned and operated by N9NE Group.[5]

Gaming licensees might be considered joint employers with its venue operators due to the level of indirect control the licensees have over the venue employees. Licensees assess their venues and impose certain restrictions on how the venues are operated. Licensees have some power to indirectly control the day-to-day operations of the venues and its employees. Licensees also investigate into many areas of a venue's operations which is incredibly similar to the actions of an employer. When applying the joint employer standard to the current interactions of licensees and venue operators, it may be likely that a court would hold the licensees as joint employers of the venue employees. The licensees might be held liable for any and all wage and hour violations of venue employees. The Nevada gaming authorities might also hold the gaming licensees liable for federal and state labor violations of venue employees' rights.

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[2] Arnold M. Knightly, *Gaming Board Officials Offers "Preventive" Tips*, LAS VEGAS REVIEW-JOURNAL, Sept. 17, 2009, http://www.reviewjournal.com/business/gaming-board-official-offers-preventive-tips.
[3] Steve Green, *Financial Problems Preceded Former Nightclub Exec's Apparent Suicide*, VEGAS INC., Nov. 25, 2011, http://www.vegasinc.com/business/2011/nov/25/financial-problems-preceded-n9ne-group-execs-appar/.
[4] *Id.*
[5] *Id.*

This paper examines how the National Labor Relations Board ("NLRB") might be able to hold gaming licensees as joint employers of venue employees and how licensees may be individually liable for wage and hour violations of the venue employees. Part I details the level of control licensees have over venue operations and examines the wage and hour violations that occur in casinos. Part II discusses the Fair Labor Standards Act and the legal principles of a joint employer relationship. This part further applies these legal principles to the relationship between a gaming licensee and a venue operator. Part III proposes ways for the gaming authorities and gaming licensees to improve the labor conditions of venue employees.

The Nevada Gaming Control Board and Nevada Gaming Commission are diligent in protecting the gaming industry from conduct that would harm the general welfare and damage the public's trust of the gaming industry.[6] Therefore, gaming licensees employ strong oversight over how a third party venue operator runs his or her own business. Some gaming licensees give the venues' employees the same hiring orientation that casino employees would receive to ensure a uniform standard for guest services.[7] Additionally, gaming licensees require that the venues' security cooperate with casino security and law enforcement to ensure the safety of the patrons.[8]

I. The Nevada Gaming Control Board expects licensees to assess venues to ensure that the venues are operated in accordance with all state and federal laws and regulations.

In 2009, the Nevada Gaming Control Board issued a letter to gaming licensees concerning the operation of nightclubs (the "2009 Industry Letter"). The 2009 Industry Letter stated that if licensees have not done so already, they should thoroughly assess their nightclubs

[6] About Us, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/index.aspx?page=2.
[7] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.
[8] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.

and similar venues.[9] Relevant areas to consider were as follows: (1) policies, procedures, and internal controls; (2) venue security cooperation/coordination with casino security and law enforcement; (3) general business practices; (4) accounting practices (audit procedures); and (5) employee due diligence.[10]

The Board also listed assessments that some licensees have already implemented into their venue operations: (1) visiting/shopping at locations as typical customers; (2) interviewing employees; (3) reviewing websites associated with operations on the licensee's properties and utilizing (purchasing front-of-line admission and table service) the websites to test their legitimacy; (4) comparing tickets sold through external sites with internal records; (5) evaluating door, cash bank check in/check out, tip pooling and distribution procedures; (6) comparing tips reported to existing compliance agreements from payroll records; and (7) interviewing management about their policies and procedures regarding the handling of incapacitated patrons, minors, illegal drugs, prostitution, club access for law enforcement, and coordination with casino security.[11] Licensees took the suggestions of the Board seriously as evidenced by the Board's March 2013 Industry Letter, which applauded the licensees for their significant progress in policy development and venue protection.[12]

A. Displays of licensee control over third party venue operations by Mandalay Bay Hotel & Casino and MGM Resorts International.

MGM Resorts International ("MGM") operates 15 wholly owned resorts in the United States as well as many managed outlets, utilizing third party management with specific expertise

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.

in restaurant and nightclub venue operations.[13] The company owns and operates twelve casino resorts in Nevada and owns half of the Aria Casino Resort.[14] As of December 31, 2012, MGM operated approximately 27% of the 150,500 guestrooms in Las Vegas.[15] It is clear that a fair amount of venue operators in Nevada are under some control of MGM's policies and lease agreements.

MGM, has always regulated nightclubs and ultra-lounges located on its various premises.[16] Since 2008, MGM's Internal Audit Department has performed semi-annual reviews of nightclub operations regardless of whether it is operated by MGM or a third-party operator.[17] The reviews entail investigations for security procedures and training programs directed to prohibit drugs, lewd behavior, and prostitution.[18] Additionally, the Internal Audit Department regularly conducts random observations and issues reports, which require responses from the nightclub management when necessary.[19]

Through January 2014, the Internal Audit Department had conducted 133 reviews of nightclubs and lounges located on MGM's premises.[20] These efforts included hiring two former Las Vegas Metropolitan Police officers to conduct undercover investigations of their venues in 2012.[21] In May 2013, with the help of another investigative firm, MGM conducted thirty-four other undercover investigations of fourteen nightclubs, three day club pools,[22] three lounges, and

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[13] Company Profile, REUTERS, http://www.reuters.com/finance/stocks/companyProfile?symbol=MGM.
[14] *Id.*
[15] *Id.*
[16] State Gaming Control Bd. v. Mandalay Corp., NGC 13-03 at 2, March 2014, http://gaming.nv.gov/modules/showdocument.aspx?documentid=8743.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 2-3.
[20] MGM hired outside investigators to conduct the reviews.
[21] *Id.* at 3.
[22] Day club pools are similar to nightclubs—patrons enjoy music and alcohol while lounging poolside.

fourteen bars.[23] On a routine basis, MGM Audit and Compliance Committees discuss nightclub issues of which they are notified.[24] MGM representatives must consistently collaborate with the Gaming Control Board and Las Vegas Metropolitan Police Department to maintain nightclub activity occurring on MGM premises.[25]

One specific example of MGM's involvement with its nightclubs concerns the House of Blues Foundation Room ("Foundation Room") venue located within the MGM-owned Mandalay Bay Hotel & Casino ("Mandalay Bay"). Since 2008, Mandalay Bay has required Foundation Room security and host employees to attend security training programs taught by Mandalay Bay's own agents.[26] Immediately following a Complaint filed by the Gaming Control Board in 2014, MGM began a full investigation of the Foundation Room's activities.[27] As part of the lease agreement MGM required the Foundation Room to agree to significant changes in the internal policies and procedures governing the operations of the Foundation Room.[28] Among MGM's significant changes to the lease agreement, MGM also required the Foundation Room to seek its approval before entering into contracts for services with third parties.[29] Other amendments to the lease require Foundation Room employees and employees of approved third-party contractors to undergo background checks administered by MGM.[30]

The Foundation Room itself also took prompt action following the 2014 Complaint: the Foundation Room conducted covert investigations, terminated six employees, and ended its

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[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at 4.
[27] State Gaming Control Bd. v. Mandalay Corp., NGC 13-03 at 2, March 2014, http://gaming.nv.gov/modules/showdocument.aspx?documentid=8743.
[28] *Id.*
[29] *Id.*
[30] *Id.*

relationship with some third party contractors.[31] The Foundation Room also implemented background checks on all current third party contractors and pledged to do so for future contractors.[32] Foundation Room employees and management completed extensive zero tolerance training taught by Mandalay Bay's security training officers, and trained all other Las Vegas House of Blues employees.[33] The Foundation Room also retained additional senior security and compliance employees,[34] and committed to maintaining a relationship with the Las Vegas Metropolitan Police Department to better anticipate issues arising from restaurants and lounges in Las Vegas.[35]

The level of control that Mandalay Bay and MGM exert over their venue operators is high and not traditionally in character with a typical lessor–lessee relationship. Maintaining the reputation of the Nevada gaming industry is so compelling that venue operators know they must allow the gaming licensee to possess some control over the venue operations even though the licensee is simply a landlord. As demonstrated with the Foundation Room above, licensees can have the power to amend their contract with a venue operator, require background checks of the venue employees, require licensee approval of the venue operator's contracts with third parties, and require the venue's employees to attend training sessions conducted by the licensees' agents.[36] It is fair to assume that MGM Resorts International is not the only licensee in Nevada that exercises some amount of control over their venue operations to ensure compliance with gaming regulations. Licensees have to pay close attention to their venue operations to avoid being held liable by the gaming authorities for the venue operators' actions.

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[31] *Id.* at 5.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] State Gaming Control Bd. v. Mandalay Corp., NGC 13-03 at 2, March 2014, http://gaming.nv.gov/modules/showdocument.aspx?documentid=8743.

II. Department of Labor and state laws for wage and hour.

If a venue operator violates wage and hour laws the licensee could be held liable for the violations—by the Nevada Gaming Control Board and possibly by courts. Under the Fair Labor Standards Act (FLSA), the federal minimum wage is $7.25 per hour.[37] However, states often have their own minimum wage laws, entitling an employee to a higher minimum wage if set by the state.[38] Under federal law covered nonexempt employees must receive overtime pay for work in excess of 40 hours per workweek at a rate no less than 1.5 times the regular rate of pay.[39] Employers are not required to pay overtime for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.[40] Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.[41]

Nevada has two minimum wage standards depending on an employee's health insurance coverage.[42] If the employer provides no health insurance benefits the state minimum wage is $8.25.[43] The state minimum wage is $7.25 if the employer provides health insurance benefits and the employee receives these benefits.[44] Nevada minimum wage is linked to a consumer price index and adjusts in July each year.[45] In Nevada an employer is required to pay 1.5 times an

[37] Wage and Hour Division-Overview, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/whd/flsa/.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] Wage and Hour Division-Minimum Wage Laws, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/whd/minwage/america.htm#footnote.
[43] *Id.*
[44] *Id.*
[45] *Id.*

employee's regular wage rate when an employee works more than 40 hours in any scheduled week of work or more than 8 hours in any workday, whichever would happen first.[46]

A. Wage and hour violations in Nevada Casinos.

Despite the obvious fact that federal and state labor laws should be adhered to several casinos in Nevada have been alleged to be in violation of labor laws. In 2010, Station Casinos Inc.,[47] settled a class action suit for $1.2 million where Station Casinos failed to pay overtime wages for 24,000 current and former hourly employees.[48] Employees alleged that they were being deprived of proper pay due to Station Casino's rounding pay system.[49] Under this system, if an hourly employee clocks in fourteen minutes before the quarter hour, the computer system automatically rounded the time forward to the nearest quarter hour.[50] Likewise, if the employee clocks out past the scheduled time, the time is rounded back to the nearest quarter.[5152] Thus, employees were not compensated correctly for their hours worked and were denied any due overtime pay.[53]

Another wage dispute of a different character occurred in 2013, when Wynn Las Vegas card dealers filed a complaint alleging unlawful sharing of tips ("tip-pooling") in the Wynn Resort Las Vegas.[5455] The Supreme Court of Nevada ruled that it is lawful to take tips of

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[46] N.R.S. § 608.018.
[47] Station Casinos Inc., caters to local players and operates several casinos located throughout Las Vegas.
[48] Jocelyn Allison, *Station Casinos Gets OK For $1.2M OT Settlement*, LAW 360, Oct. 27, 2010, http://www.law360.com/articles/204838/station-casinos-gets-ok-for-1-2m-ot-settlement.
[49] Cy Ryan, *Judge Delays Ruling On Station Casinos Wage Lawsuit*, LAS VEGAS SUN, Apr. 26, 2010, http://www.lasvegassun.com/news/2010/apr/26/judge-delays-ruling-station-casinos-wage-lawsuit/.
[50] *Id.*
[51] *Id.*
[52] For example, an employee would clock out at 8:10 p.m. but the system would round the time back to be 8:00 p.m., omitting the ten minutes that the employee worked.
[53] *Id.*
[54] Wynn Resort Las Vegas is a luxury property located on the Las Vegas Strip.

employees to split with "casino service team leads."[5657] The resort implemented this tip-pooling to encourage table game dealers to take salaried supervisory positions; dealers however were reluctant to take such positions because they would experience a pay decrease from the lack of tips they would receive as dealers.[58] The Court reasoned that although Nevada Revised Statute Section 608.160 prohibits an employer from taking and keeping employees' tips, the statute does not stop a tip policy that splits tips among the employees.[59] The Court held the Wynn's tip-pooling was not unlawful merely because tip-pooling benefits an employer by not having to offer higher salaries.[60]

In 2014, employees of The Orleans and Gold Coast casinos, both operated by Boyd Gaming Corporation, alleged that their employers unlawfully failed to pay overtime compensation.[61] The allegations were based on the company's alleged policies of rounding down employees' time worked and requiring employees to work off the clock.[62] The "rounding down" claim alleged the company's use of a time-keeping management system resulted in significant time rounded down, saving the employer money, and depriving employees of their entitled pay for hours worked.[63] The "off-the-clock" claim alleged employees with bank and cash handling duties were not paid for the extra time at the end of their shifts, in which they were required to

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[55] Steve Sebelius, *House Wins Again In Employee Tip Pooling Lawsuit*, LAS VEGAS REVIEW-JOURNAL, Nov. 1, 2014, http://www.reviewjournal.com/columns-blogs/steve-sebelius/house-wins-again-employee-tip-pooling-lawsuit.
[56] *Id.*
[57] "Casino service team leads" are floor supervisors that act as management over various table games.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] Calder Huntington, *Nevada Employees Cannot Sue For Wage Violations Under State Wage Statute*, EMPLOYERS LAWYERS BLOG, Aug. 22, 2014, http://www.employerslawyersblog.com/2014/08/nevada-employees-cannot-sue-for-wage-violations-under-state-wage-statute.html.
[62] *Id.*
[63] *Id.*

account for and return the cash remaining in their registers to the casino cage—where the casino maintains its cash.[64]

The employees also claimed that the employers failed to properly pay all wages due to the employees after they resigned.[65] Boyd Gaming moved to dismiss the employees' claims for violations of the Nevada labor statutes, citing decisions written by United States District Court Judges James C. Mahan and Robert C. Jones, which held that various sections of the applicable statutes did not provide a private remedy to enforce the state's wage and hour standards.[66] The Court agreed and dismissed the Nevada wage claims in their entirety.[67] The employees were granted a conditional class certification under the FLSA because they alleged sufficiently similar claims in two Las Vegas casinos.[68] The case is still ongoing because on August 13, 2015 a federal magistrate judge in Nevada denied the preliminary motion for settlement due to insufficient information regarding whether the settlement amount was fair and reasonable.[69]

Similar to the Boyd Gaming case, The Cosmopolitan of Las Vegas Resort Casino, owned by Nevada Property 1 LLC, is undergoing collective class actions filed by employees alleging unpaid wages, unpaid overtime wages, and unfair overtime rate calculations.[70] The company policy required employees to change into uniforms at the hotel prior to clocking in and clocking out before changing out of their uniforms.[71] Employees in the Cosmopolitan's Slot Operations Department who were required to have keys, radios, or pouch funds to perform job duties were

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[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] Ronald Miller, *Casino Workers' Collective Wage Settlement Rejected; Court Unable to Determine if Fair and Reasonable*, WOLTERS KLUWER, http://www.employmentlawdaily.com/index.php/news/casino-wage-settlement-rejected-court-unable-to-determine-if-fair-and-reasonable/.
[70] Lewis v. Nevada Property 1, LLC, Case No. 2:12-cv-01564-MMD-GWF, January 2013.
[71] *Id.* at 14.

required to obtain the items before clocking in, and to clock out before returning the items.[72] This was evidenced in the Slot Operations Department's written policy and was in effect until July 2012.[73] Despite a written policy stating otherwise, an employee who worked at the Cosmopolitan's pizzeria declared that her manager stated it was company policy for employees with a cash bank to receive their cash bank prior to clocking in and to return the bank funds after clocking out.[74] Employees also argue that The Cosmopolitan's hourly-wage employees receive $8.00 lunch stipends for the employee dining commons, which is not included in their compensation for purposes of calculating employee overtime pay at 1.5 times the regular pay.[75] Although the policy was written to comply with labor laws employees were verbally directed otherwise and the casino is alleged to be in violation with the law.

B. Potential violations of federal and state labor laws that may occur in third-party owned venues.

Many people who work in Las Vegas's entertainment and hospitality industry make a majority of their income from tips. However, employers should ensure their employees are paid fairly for their hours worked. Typically, employees of day club and nightclub venues only work three days per week and will not receive health benefits. Because day club and nightclub venues are only open three days per week, it is fair to assume, for hypothetical reasons, that venue operators require employees to work double shifts. If a cocktail server worked a six-hour day shift, and came back three hours later, to work a six-hour night shift she would have worked

[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*

twelve hours in one twenty-four hour period. Under Nevada law, that server would be entitled to receive four of her hours worked at 1.5 times her regular pay rate.[76]

Overtime hours are simple to meet, even within a three day work week. For example, if two days are twelve-hour shifts and the third day is a sixteen-hour day, or if this hypothetical server is called in on her day off to work, overtime may start accruing.[77] Some day club and nightclub venues require their employees to attend weekly nights out to support other nightclub venues. To avoid paying employees for their time attending the events, managers strongly encourage attendance. If an employee does not attend, that employee might be placed in a less favorable section of the club and see a decrease in his or her pay. This is common in the Las Vegas nightlife industry but has not been confirmed by sources, however in this scenario, the weekly nights out should be paid and accounted for when the employer determines whether overtime pay is required under federal and state laws. Also for example, if an employer directs the bussers to clock out after an eight-hour shift and continue to work, it would be a violation of federal and state labor laws.[78]

It is also easy for restaurant operators to violate wage and labor laws. If an employee is required to clock-out and continues to work, such as finishing up a table, polishing glasses, or folding napkins, the employer would be in violation of federal law.[79] Although an employee agrees to clock-out and not be paid for the extra time worked performing restaurant duties, the

[76] N.R.S. § 608.018.
[77] *Id.*
[78] Wage and Hour Division-Minimum Wage Laws, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/whd/minwage/america.htm#footnote.
[79] Fair Labor Standards Act, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf.

employee is still entitled to overtime pay if she has worked over 40 hours in one work week.[80] Some restaurants on the Las Vegas Strip will continue to seat customers almost near closing time and require their employees to stay and serve the guests. The server, busser, bartender, and manager will wait for the table to finish. If the employees are told by management to clock-out and wait for the last table to leave, the employer would be in violation of state and federal labor laws.[81]

C. Licensees might contract with third parties to operate venues to avoid union involvement.

The Culinary Union has fought for many hotel and casino workers' rights throughout its history in Las Vegas.[82] The Culinary Union led more than 17,000 workers to protest 32 resorts on the Las Vegas strip in 1984.[83] After picketing for nine months, 900 workers were arrested and six casinos cut all ties with the union.[84] One possible reason or positive factor that may incentivize licensees to lease space to third party vendors is to avoid union involvement. It can be challenging for an employer to terminate an employee protected by the Culinary Union. There are extra steps taken just to discipline an employee, e.g., a labor representative would have to be present during the manager's conversation with her employee regarding employee discipline.[85] Some managers might even keep poor performing employees on payroll just to avoid litigation with the labor union (if the employees were terminated). If there had been union involvement in the previous hypotheticals, the employees might be more aware of their rights and refuse to

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[80] Wage and Hour Division-Minimum Wage Laws, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/whd/minwage/america.htm#footnote.
[81] *Id.*
[82] Ed Komenda, *Culinary Union History Striking*, VEGAS INC., July 15, 2013, http://vegasinc.com/business/gaming/2013/jul/15/culinary-union-history-striking/.
[83] *Id.*
[84] *Id.*
[85] *See* Labor Union Agreement with Golden Nugget Casino, https://www.dol.gov/olms/regs/compliance/cba/pdf/cbrp0792.pdf, (employers must take progressive discipline before terminating an employee and notify the union in writing within 72 hours of the discipline or termination).

clock-out and continue to work. Even if the employees comply with management orders by continuing to work after clocking-out, an employee would have access to a union representative that could assert the employee's entitlement to overtime pay.[86] As such, the benefits of union agreements with gaming licensees for employees would possibly incentivize them to unionize, something the licensee would likely wish to avoid.[87]

When a casino enters into a collective bargaining agreement with a union—it is less likely that wage and hour laws will be violated because the agreement offers workers higher pay than non-union workers.[88] The union agreements are costly to employers; they often include holiday pay, such as twice the regular pay rate if the employee works on a holiday and regular pay for an employee even if the employee did not work on the holiday.[89] Union involvement also brings with it expenses associated with hiring legal counsel to negotiate with the union and to settle employee grievances.[90] The perceived negative burdens that union involvement place upon a licensee may be a reason to why licensees might want third parties to own and operate venues on licensee premises.

Furthermore, if a gaming licensee leases space to a third party to operate a venue, the licensee enjoys the benefits of the third party's expertise in the venue and the licensee does not have to engage with labor unions. Avoiding union involvement keeps the casino's cost of doing business down as well as the venue operator's costs—as noted earlier union agreements often

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[86] Our Union, CULINARY WORKERS UNION LOCAL 226, http://www.culinaryunion226.org/union/history.
[87] Even Donald Trump is anti-union at his own Trump Hotel located just off the Las Vegas Strip. *See* Michelle Chen, *No Surprise: Trump is a Union Buster at His Own Hotel*, THE NATION, August 18, 2015, http://www.thenation.com/article/no-surprise-trump-is-a-union-buster-at-his-own-hotel/.
[88] *Id.*
[89] Labor Union Agreement with Golden Nugget Casino, https://www.dol.gov/olms/regs/compliance/cba/pdf/cbrp0792.pdf.
[90] For example, if an employee was terminated for poor work performance but wanted to claim she was in a protected class, the union would support her and allege the violation whereby the casino would have to defend itself.

include higher pay for employees. Without union agreements the venue operator can keep its employment costs down. If the employee does not know her rights, and feels she has no leverage with which to go against her employer, she will continue to work and not ask for overtime pay that she is entitled to. She also would not enjoy the benefits of union agreements, such as holiday pay. This is important to day/nightclub and restaurant venues because the Las Vegas Strip is busiest on holiday weekends.[91] If the venue operators were required to pay holiday pay for all their employees, and pay overtime wages for hours worked over eight hours in one day or 40 hours worked in one week, the operators would definitely see a difference in profits.[92]

III. FAIR LABOR STANDARDS ACT AND THE JOINT EMPLOYER STANDARD

Gaming licensees should be well informed of the FLSA and the joint employer standard because it might apply to the licensees in regard to their venue operators' employees. There is a possibility that a licensee could be held liable for wage and hour violations of a venue's employees if a court believes the licensee and venue operator acted as joint employers. On August 27, 2015, the NLRB in a 3-2 decision overruled *TLI Inc.*, and applied the joint employer standard more liberally.[93] Now, a joint employer relationship could be found even where sufficient control over the terms and conditions of employment has been exercised indirectly, such as through an intermediary.[94] The Board added, "It is not the goal of joint-employer law to guarantee the freedom of employers to insulate themselves from their legal responsibility to workers, while maintaining control of the workplace."[95] This new ruling may make it more likely

[91] Holiday Weekends, VEGAS POOL SEASON, https://vegaspoolseason.com/holiday-weekends.
[92] N.R.S. § 608.018.
[93] *Browning-Ferris Indus. of California, et al. v. Sanitary Truck Drivers*, 362 NLRB 186 (2015).
[94] *Id.*
[95] *Id.* at 21.

that gaming licensees can be deemed joint employers if they exercise sufficient control, directly or indirectly, over the essential terms and conditions of venue employees.[96]

The FLSA prescribes basic standards that employers must adhere to regarding minimum wage and overtime pay.[97] The FLSA regulations provide that all joint employers are individually liable for violations of the Act.[98] Joint employer relationships are found in situations where one employer is acting directly or indirectly in the interest of the other employer in relation to the employee, or where the employers are not completely disassociated with respect to the employment of a particular employee.[99] The joint employers may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[100]

> [I]f the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act . . . . [A]ll joint employers are responsible both individually and jointly, for compliance with all of the applicable provisions of the act, including overtime provisions, with respect to the entire employment for the particular workweek.[101]

The FLSA defines an "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee."[102] An "employee" defined by the FLSA is "any individual employed by an employer."[103]

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[96] *Id. See also* Board Issues Decision in Browning-Ferris Industries, NATIONAL LABOR RELATIONS BOARD, Aug. 27, 2015, https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-browning-ferris-industries.
[97] The Fair Labor Standards Act, U.S. DEPARTMENT OF LABOR, http://www.dol.gov/compliance/laws/comp-flsa.htm.
[98] 29 C.F.R. § 791.2 (a).
[99] *Id.*
[100] 29 C.F.R. § 791.2 (b).
[101] 29 C.F.R. § 791.2(a).
[102] 29 U.S.C. § 203(d).
[103] 29 U.S.C. § 203(e)(1).

In *Industrial Personnel Corporation v. NLRB*, the court held joint employment existed because the shipper with a cost-plus lease terminable with thirty days' notice could reasonably be perceived to have some control over wages that could be bargained for between the lessor and the union.[104] Although the third party shipper was not directly involved with the collective bargaining agreement the court found some control was exerted over wages because the employer refused to offer employees a higher wage for fear of losing the shipper as a lessee.[105] In *Hoskins Ready-Mix Concrete*, a third party held a contract with the employer where the third party had the contractual power to exercise some control over the operations.[106] Although the power was not exercised by the third party, the NLRB held that the exercise of control from a contract and a retained power to control set forth in a contract but not exercised are separate indicia of joint employment and each can support a finding of joint employment.[107]

The "industrial realities" of a coal company created a joint employer relationship, despite a lack of employment control, employee supervision, and no contractual rights to exert control over the employees.[108] Joint employment was found because Jewell exercised de facto control over the Horn & Keene employees—Jewell provided the land which the miners worked on, the workman's compensation coverage on workers in its mines, the engineering services and safety inspections of the mines, and provided the electricity to the Horn & Keene mine.[109] The NLRB looks at the totality of the circumstances of each case to determine whether a joint employer relationship is created although two contracting parties may not have intended to act as joint employers.

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[104] Indus. Personnel Corp. v. NLRB, 657 F.2d 226, 229 (8th Cir. 1981).
[105] *Id.*
[106] Hoskins Ready-Mix Concrete, 161 NLRB 1492 (1966).
[107] *Id.* at 1493.
[108] NLRB v. Jewell Smokeless Coal Corp., 435 F.2d 1270 (1970).
[109] *Id.*

A. Bonnette factors that establish a joint employer relationship.

The idea of employment "is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes."[110] The federal minimum wage and overtime enforcement provisions have three basic purposes: (1) individual employees should be compensated for their work; (2) employers cannot gain unfair advantage in the commerce by withholding rightfully due compensation of employees; and (3) prevent future minimum wage and overtime violations.[111] Courts must consider the totality of the circumstances of the relationship between employees and alleged employers.[112] Thus, "[e]conomic realities, not contractual labels, determine employment status for the remedial purposes of the FLSA."[113] Among the factors the court considers most relevant when evaluating the economic reality of an alleged joint employment relationship are "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of payment, (3) determined the rate and method of payment, and (4) maintained employment records."[114] "No single factor is dispositive, even where some factors weigh heavy, a court may find no joint employment."[115]

In *Bureerong v. Uvawas*, Thai immigrants alleged minimum wage and overtime violations from 1988 to 1995 by a garment facility operated by several entities, which they deemed "operators."[116] The Secretary of Labor filed suit against the operators.[117] The Thai immigrants also filed another suit against the "manufacturers," the entities that contracted with

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[110] Bonnette v. California Health and Welfare Agency, 704 F.2d 1465, 1469 (9th Cir. 1983).
[111] Bureerong v. Uvawas, 922 F.Supp. 1450, 1466 (9th Cir. 1996).
[112] Bonnette, 704 F.2d at 1470.
[113] Real v. Driscoll Strawberry Associates, 603 F.2d 748, 754 (9th Cir. 1979).
[114] Bonnette, 704 F.2d at 1470.
[115] Zheng v. Liberty Apparel Co., Inc., 355 F.3d 61, 76 (2d Cir. 2003).
[116] Bureerong, 922 F.Supp. at 1459.
[117] *Id.*

the operators.[118] The manufacturers claimed the suit should be dismissed because if they were "joint employers" then the first suit filed by the Secretary of Labor precluded the plaintiffs from filing a second suit against the manufacturers.[119] The court rejected this argument and allowed the plaintiffs to pursue the second suit against the manufacturers.[120]

The manufacturers were clearly removed from what transpired in the actual facility, had no power to hire or fire the employees, and did not directly supervise or control work schedules or conditions.[121] Despite all these factors, the court must construe the provisions of the FLSA expansively and look to the economic realities of the relationship between the parties.[122] The court held the plaintiffs sufficiently alleged an employment relationship with the contracting "manufacturers" within the meaning of the FLSA.[123] The court denied the Defendants' Motion to Dismiss Plaintiffs' Second Cause of Action because the plaintiffs successfully pled that the "manufacturers" and "operators" were the plaintiffs' "joint" employers.[124] Regardless of the lack of direct control, the court still found a joint employer relationship in the early stages of the complaint.[125]

Sometimes a court might not choose to follow the Board's decision and decide a case differently. Even if the NLRB decides a gaming licensee is a joint employer with its venue operator, a court might not agree and choose not to enforce the Board's decision. In *New York-New York,* the New York-New York resort contracted with a third-party, Ark, to operate

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[118] *Id.* at 1460.
[119] *Id.* at 1465.
[120] *Id.* at 1466.
[121] *Id.* at 1468.
[122] *Id.*
[123] *Id.* at 1469.
[124] *Id.*
[125] *Id.*

restaurant venues on its premises.[126] Three off-duty Ark employees decided to handbill outside the entrance of New York-New York.[127] The handbills asked guests to encourage the casino to negotiate with the union.[128] New York-New York employees removed the Ark employees from the property and stated they were private trespassers.[129]

Despite a contracting relationship, the NLRB found that employees of a third-party contractor had employee rights to organize on New York-New York's property.[130] The NLRB decided that New York-New York violated the Ark employees' Section 7 rights of the National Labor Relations Act, which gives employees "the right to self-organization, to form, join, or assist labor organizations."[131] The Board reasoned that Section 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise" of the Section 7 rights.[132] "Employee," as defined by the Act, includes "any employee, and shall not be limited to the employees of a particular employer."[133] However, the court did not see eye to eye with the NLRB's actions.[134] Since Ark employees were employed by Ark and not New York-New York, the court refused to enforce the NLRB's decision that employees of a contractor had the right to be on the property of another.[135] Thus, even if the Board decides that a joint employer relationship exists between a gaming licensee and a nightclub operator located on its premises, a court may refuse to follow the Board's decision and find no joint employer relationship.

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[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.* at 587.
[130] New York-New York, LLC, v. NLRB, 313 F.3d 585, 586 (D.C. Cir. 2002).
[131] 29 U.S.C. § 157.
[132] 29 U.S.C. § 158(a)(1).
[133] 29 U.S.C. § 152(3).
[134] New York-New York, 313 F.3d at 591.
[135] *Id.*

Joint employment can be found when one employer contracting in good faith with an independent company still retains sufficient control of the terms and conditions of employment of the independent company's employees.[136] In *Hamburg Industries*, joint employment was found where the user firm required the supplier firm's employees to follow its plant safety rules and regulations.[137] Joint employment was also found in *NLRB v. Jewell*, where the Horn & Keene miners were required to follow safety rules and undergo safety inspections of Jewell Corporation.[138] In *NLRB v. Greyhound Corporation*, Greyhound was found to be joint employers of the janitors and porters employed by Floors, because Greyhound possessed sufficient control over the employees' work.[139]

B. The amount of supervision licensees need to place on venue operators may result in a finding of joint employment.

The gaming licensees may appear to be a joint employer in a venue employee's perspective. After all, some gaming licensees give hiring orientations to the venue employees and some gaming licensees now incorporate their own security employees into nightclubs to ensure the safety of the patrons, who are also patrons of the casino.[140] One would not think that a lease agreement would impose liability to the landlord, or authorize a landlord to step in and operate certain functions of the venue as a joint employer. However, continuing incidents have occurred to create this need for oversight of venue operations, and without it, gaming licensees would continue to be fined $100,000 per violation of its venue operators' actions.[141]

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[136] Walter B. Cooke, 262 NLRB NO. 74 (1982).
[137] Hamburg Industries, 193 NLRB 67, 67 (1971).
[138] NLRB v. Jewell Smokeless Coal Corp., 435 F.2d 1270 (1970).
[139] NLRB v. Greyhound Corp., 368 F.2d 778, 781 (5th Cir. 1966).
[140] State Gaming Control Bd. v. Mandalay Corp., NGC 13-03 at 4, March 2014, http://gaming.nv.gov/modules/showdocument.aspx?documentid=8743.
[141] *Id.*

This is a very interesting relationship because the venue operators need to comply with the orders of the gaming licensees. Gaming licensees lease property to tenants and partially advise them on how to run their business. Although this is a big imposition on the part of the gaming licensees, they run the risk of heavy fines and losing their gaming licenses if the venue operators do not comply with the gaming regulations.[142] Gaming licensees have been held liable for the unlawful actions of their venue operators—violations of state and federal labor law could be another liability.

i. Licensee assessments of venue operations may indicate a joint employer relationship.

Currently, the Nevada Gaming Control Board expects gaming licensees to consider many areas of a venue's operation.[143] As mentioned earlier in the 2009 Industry Letter, some licensees have already implemented assessments of their third party vendors.[144] However, the Board would still like greater diligence from more licensees in reviewing their relationships with such vendors, including policies, procedures, and internal controls of the venue operator; visiting and investigating locations as typical customers; interviewing employees; interviewing management as to their policies and procedures regarding the handling of incapacitated patrons, minors, illegal drugs, prostitution; assessing club access for police; and assessing venue coordination with casino security.[145] The screening of employees may be a sign of a joint employer relationship. For instance, in *Trans-State Lines, Inc.*, the NLRB found a joint employer relationship existed between a trucking company and fleet companies where they screened

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[142] Glenn Light, Karl Rutledge and Quinton Singleton, *Keeping Compliance in Check*, GAMING MANAGEMENT, Nov. 2009, http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf.
[143] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.
[144] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.
[145] *Id.*

applicants applying for jobs with fleet companies, disclosed to fleet owners which applicants the trucking company approved of, and handled dispatching from certain locations.[146] Similar to *Trans-State Lines, Inc.*, the Nevada Gaming Control Board suggests that gaming licensees also screen the employees and management of venue operators—an act which might support a finding that licensees are joint employers of venue employees.[147]

Gaming licensees are expected to monitor areas of venue operations that deal with revenue, such as the following: price of tickets sold through external sites compared with internal records; whether doormen are accepting cash tips; evaluate door cash bank in-and-out; tip pooling and distribution procedures; accounting practices; and tip reporting according to existing compliance agreements from payroll records.[148] In *Jewell*, the court stated that the company's safety inspections of the coal mines was a factor that contributed to its status as a joint employer.[149] Similar to the situation in *Jewell*, gaming licensees inspect the venue operations by shopping the venues to prevent illegal activity, auditing payroll records to ensure tax compliance, and inspecting accounting practices.[150]

When applying these facts to the joint employer standard, it appears that a joint employer relationship could be established between a gaming licensee and its venue operator.[151] If several employers exert substantial control over a group of employees and it can be shown that they share or co-determine the matters governing the essential terms and conditions of employment,

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[146] Trans-State Lines, Inc., 256 NLRB 648, 649 (1981).
[147] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.
[148] *Id.*
[149] NLRB v. Jewell Smokeless Coal Corp., 435 F.2d 1270 (1970).
[150] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.
[151] 29 C.F.R. § 791.2(a).

they constitute "joint employers" within the meaning of the NLRA.[152] If a gaming licensee were to require venue employees to submit to drug testing it may be evidence of joint employment because drug testing is an essential term to one's employment. Possibly from the Board's perspective, if the gaming licensees were not joint employers, they should not have direct or indirect control to require venue employees to submit to testing.

Licensees interviewing their third party venue managers as to their policies and procedures, as well as interviewing venue employees, may be construed as directing the venue operators' day-to-day activities. If a gaming licensee does not agree with the venue management's policies and procedures, the licensee can request the management to modify the policies and procedures to better comply with gaming regulations, which may be considered evidence of control over venue operations and possibly essential terms of employment.[153]

Yet more potential evidence of a joint employment relationship concerns employee discipline. If a gaming licensee interviews a venue's employee and believes the employee may have the tendency or potential to conduct illegal activity during employment, the licensee could notify the venue operator's management, and indirectly have the employee terminated or not hired. Like in *Trans-State Lines, Inc.*, the gaming licensees can screen venue employees and have an indirect effect on their employment.[154] By applying the same reasoning as the Board in *Trans-State Lines, Inc.*, the level of control that gaming licensees have over venue employees may grant them joint employer status with the venue operators.[155] Therefore, gaming licensees

[152] NLRB v. Browning-Ferris Industries, Inc., 691 F2.d 1117, 1124 (3rd Cir. 1982).
[153] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.
[154] Trans-State Lines, Inc., 256 NLRB 648, 649 (1981).
[155] 29 C.F.R. § 791.2(a).

could possibly be held liable for any wage and hour violations that occur during the venue employees' course of employment.

This gaming licensee and venue operator relationship is distinguishable from *TLI, Inc.*, where the Board did not find a joint employer relationship because the level of control exercised did not seem to rise to the level of a joint employer because the power to hire, fire, and discipline was not present.[156] This has since been overruled and a more liberal standard has been implemented to account for the current state of employment where many people work for temp agencies and putative joint employers should be held liable for labor violations.[157] In *TLI, Inc.*, a client, Crown Zellerbach leased drivers from TLI, Inc., a leasing agency.[158] Crown reserved the power and responsibility to maintain operational control, direction, and supervision over the leasing agency's drivers in the lease contract.[159] These powers and responsibilities included scheduling and dispatching the drivers, giving directions, procedures for loading and unloading, and all other matters related to day-to-day operations.[160] Additionally, Crown would file incident reports with the drivers' employer, TLI, Inc., whenever the drivers' conduct was adverse to the Crown's operations, and TLI, Inc., would investigate and determine the disciplinary actions.[161] Crown participated in the collective bargaining session with TLI, Inc. and the drivers' union where it made clear that the lease agreement would be jeopardized if transportation costs were not reduced and that an increase would necessitate alternatives to maintain the lease agreement.[162] Under the prior framework, the Board found the control exercised was not

[156] TLI Inc., 271 NLRB 798 (1984).
[157] *Board Issues Decision in Browning-Ferris Industries*, NATIONAL LABOR RELATIONS BOARD, August 27, 2015, https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-browning-ferris-industries.
[158] TLI Inc., 271 NLRB 798 (1984).
[159] *Id.*
[160] *Id.* at 798-99.
[161] *Id.* at 799.
[162] *Id.*

sufficient to hold the client as a joint employer because it was only limited and routine—this is expressly overruled now and even indirect control may create a joint employer relationship.[163]

Unlike *TLI Inc.*, the gaming licensee as a lessor exercises more control over its venue operators than Crown had with TLI, Inc. Licensees can revoke contracts if the venue operators conduct egregious acts on licensee premises.[164] Licensees facilitate training sessions and conduct background checks on venue operator employees.[165] Furthermore, some even require the venue operator to ask for permission to contract with a third party for services in which licensees will conduct background checks of the new third party's employees.[166] The level of control that gaming licensees impose on their venue operators far exceeds the minimal control that Crown had in *TLI, Inc.*[167] It is possible that the NLRB would find licensees that exert this substantial amount of control to be joint employers.

ii. Regardless of the joint employer standard, licensees can still be held liable and must ensure the venues are operated in accordance with all federal and state laws and regulations.

Licensees are responsible for any venue operators' violation of laws or regulations that occur on licensee premises.[168] Licensees should take necessary steps to protect the wage and hour rights of venue employees as if the employees were their own. If venue operators are to

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[163] *Browning-Ferris Indus. of California, et al. v. Sanitary Truck Drivers*, 362 NLRB 186 (2015). *See also* Molly L. Kaban and Raymond F. Lynch, Tough Times Ahead for Transit Cos. After New NLRB Test?, LAW360, Sep. 9, 2015, http://www.law360.com/articles/699872/tough-times-ahead-for-transit-cos-after-new-nlrb-test.

[164] Glenn Light, Karl Rutledge and Quinton Singleton, *Keeping Compliance in Check*, GAMING MANAGEMENT, Nov. 2009, http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf.

[165] March 21, 2013 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=7696.

[166] State Gaming Control Bd. v. Mandalay Corp., NGC 13-03 at 2, March 2014, http://gaming.nv.gov/modules/showdocument.aspx?documentid=8743.

[167] TLI Inc., 271 NLRB 798 (1984).

[168] Glenn Light, Karl Rutledge and Quinton Singleton, *Keeping Compliance in Check*, GAMING MANAGEMENT, Nov. 2009, http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf.

comply with federal laws, then a wage and overtime violation is in violation of Regulation 5.010 and the gaming licensee is responsible for the violation.[169]

> Regardless of the association or contractual agreement between the licensee, a lessee or a third party operator/manager, it remains the responsibility of the licensee to ensure operations conducted on its premises are run in accordance with all local, state and federal laws and gaming regulations. The Board is continuing its focus on this important matter and we intend to hold the licensee accountable for breaches of this responsibility.[170]

IV. RECOMMENDATIONS

Wage and hour audits of venue employees should be added to the list of areas that the Nevada Gaming Control Board expects gaming licensees to assess. As discussed earlier, gaming licensees are expected to inspect many areas of venue operations that deal with revenue.[171] It is possible that if the gaming authorities had stronger awareness of these wage and hour violations, then there would be an increased expectation on licensees to audit these activities.

Labor violations are important to society in other areas regarding goods and how workers are treated in the process of producing the goods. Considering how much revenue is earned in the gaming industry, depriving venue employees of their entitled pay is an unfair labor practice and should not be tolerated.[172] It is within the gaming authorities' discretion to implement a wage and hour audit in addition to the many other areas that the authorities already expect licensees to audit.[173] This will allow gaming authorities to hold licensees liable for the aforementioned violations of federal and state labor laws. In order to protect the general welfare of the public and

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[169] Nevada Gaming Regulation 5.010.
[170] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.
[171] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.
[172] Nevada generated $10.86 billion in 2012. Robert Ferris, *These 13 States Raked in $34B in Gaming Revenue*, USA TODAY, April 27, 2014, http://www.usatoday.com/story/money/business/2014/04/27/top-gambling-states/8168681/.
[173] Nevada Gaming Regulation 5.010.

maintain public trust of the gaming industry, licensees should take necessary actions to ensure that venue employees are not having their rights infringed.[174] Also licensees might be held as joint employers when venue employees allege wage and hour complaints. If so the NLRB might hold licensees individually liable for the unfair labor practices that occur in the Nevada gaming industry.

The opposition may argue that this new standard would create a loss of employment opportunities. In reality, rather than create a loss of employment, it will more likely affect the operator's profits. However, many would probably agree that the public policy of paying employees for work performed justifies a slight decrease in profits. The revenue will still be the same, the quality of life will be better for the employee, and the employer will have slightly less money in its pocket than previous years. Other positive factors from ensuring employee protection is the potential for decreased litigation with employees (and the costs associated with it) and protection of gaming licensees from liability.

CONCLUSION

Nevada gaming authorities expect gaming licensees to maintain public trust in the gaming industry.[175] All acts occurring on gaming licensees' premises must be in accordance with all federal and state laws and regulations.[176] Even if third party venue operators are the cause of the improper conduct, the Nevada gaming authorities will hold the gaming licensees liable.[177] Some proactive licensees regulate the venue operations in many different areas as an employer

[174] Nevada Gaming Regulation 5.010 is the catch-all provision that allows the Gaming Control Board to hold licensees accountable for any actions that may affect the general welfare and bring disrepute on the gaming industry.
[175] Nevada Gaming Regulation 5.010.
[176] April 9, 2009 Industry Letter, NEVADA GAMING CONTROL BOARD, http://gaming.nv.gov/Modules/ShowDocument.aspx?documentid=5377.
[177] Glenn Light, Karl Rutledge and Quinton Singleton, *Keeping Compliance in Check*, GAMING MANAGEMENT, Nov. 2009, http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf.

would. As discussed earlier, there are lawsuits within Las Vegas where employees alleged wage and hour violations regarding unpaid work time, unpaid overtime, unfair tip pooling, and unfair time calculation.

The Fair Labor Standards Act holds two separate entities as employers if the purported employer exerts significant control, direct or indirect, over the essential terms employment.[178] FLSA regulations provide that all joint employers are held individually liable for the wage and hour violations of their employees.[179] Gaming licensees should be aware of the legal ramifications of a joint employer relationship with their venue operators. The public trust of the gaming industry in Nevada might be affected if residents become more aware of the labor violations that occur in the casinos.

The Nevada gaming authorities could also exercise their authority over gaming licensees to ensure labor conditions of venue employees are in accord with federal and state labor laws. Weighing the benefits and negatives of implementing wage and hour audits of venues, the overall outcome would be in the best interest of the employees who have less negotiating powers than the corporations. Even if a court will not hold a casino operator liable for wage and overtime violations, it is within the Nevada gaming authorities ambit to discipline a gaming licensee for violations of federal and state labor laws that occur on its premises.[180]

[178] 29 C.F.R. § 791.2 (b).
[179] 29 C.F.R. § 791.2 (a).
[180] Nevada Gaming Regulation 5.010.