

Management Alert



California Franchisor May Be Vicariously Liable For Harassment Of A Franchisee's Employee

In *Patterson v. Domino's Pizza, LLC*, the Court of Appeal issued a potentially far-reaching decision that could hold a franchisor vicariously liable for workplace harassment by one of its franchisees. The court reasoned that the terms of the franchise agreement and the franchisor's instructions to the franchisee created a triable issue that the franchisor was liable for the harassment of an employee of one of its franchisees by one of the franchisee's supervisors.

The Facts

The Plaintiff, Taylor Patterson, worked for Defendant Sui Juris, LLC, a Domino's Pizza franchisee. Patterson, alleging that her Assistant Manager had sexually assaulted her at work, sued both Sui Juris and Domino's under the California Fair Employment and Housing Act.

Domino's moved for summary judgment, claiming that Sui Juris was an independent contractor pursuant to the terms of a written franchise agreement, and there was no principal-agency relationship between Sui Juris and Domino's that could make Domino's liable for Sui Juris's misconduct. Patterson opposed the motion by submitting that Domino's exercised significant control over Sui Juris's operations.

The Trial Court Decision

The trial court granted summary judgment to Domino's, finding that Sui Juris was an independent contractor and that the Assistant Manager who allegedly assaulted Patterson was not an employee or agent of Domino's for purposes of imposing vicarious liability. The trial court noted that the franchise agreement provided that Sui Juris, not Domino's, was responsible for "supervising and paying" store employees. Thus, the trial court concluded, there was no triable issue as to whether Domino's exercised control over Sui Juris's employment decisions.

The Court of Appeal's Opinion

The Court of Appeal overturned the trial court's ruling. The Court of Appeal held that "a franchisor may be subject to vicarious liability where it assumes substantial control over the franchisee's local operation, its management-employee relations or employee discipline." The Court found that although Domino's did not employ the franchisee's employees, the franchise agreement gave Domino's substantial control over setting the qualifications of employees and the training provided to employees. Domino's also issued a Manager Reference Guide setting forth hiring requirements, employee appearance standards, and timekeeping procedures.

The Court also considered evidence beyond the franchise agreement and policy documents: a Domino's employee had instructed the franchisee to terminate certain employees and to re-train others. Thus, the Court found that Patterson had

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met her burden to demonstrate a triable issue involving the extent of Domino's' control over the Sui Juris franchise.

The Court also indicated that a single act of harassment could be actionable if committed by a supervisor, and that if Domino's were deemed the employer then it would be strictly liable for the harassment perpetrated by Patterson's supervisor.

What *Patterson* Means For Employers

Patterson is remarkable in that it took many standard features of a franchisor-franchisee relationship and cited them to create a triable issue that the franchisor and franchisee were principal and agent rather than being principal and independent contractor. Plaintiffs likely will seek to exploit the Court's analysis to argue for vicarious liability or joint employment in the context of other corporate relationships. Thus, business organizations retaining independent contractors should be careful to review their standard contracts and modes of operation to ensure that only the independent contractor has the right to control day-to-day operational details, with the principal retaining control over the contractually defined business result.

Patterson is a reminder that it may be difficult in practice to maintain a distinction between control merely over results (consistent with an independent contractor relationship) and control over daily operational details (potentially creating an employment relationship). Employers should be mindful that the labels contained in a written agreement (e.g., "independent contractor") are not necessarily controlling. Employers should also look broadly at the nature of their corporate relationships, including reviewing written policies, guidelines, and practices, to evaluate whether the actual control exercised is sufficiently substantial to establish an agency relationship.

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