California Supreme Court Rules – No Franchisor Vicarious Liability

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The California Supreme Court recently held in *Patterson v. Domino's Pizza, LLC*, No. S204543 (Cal. Aug. 28, 2014) that a franchisor could not be held vicariously liable under the California Fair Employment and Housing Act (FEHA) for alleged sexual harassment in the franchisee's workplace in the absence of evidence establishing that the franchisor retained or assumed a general right of control over employment decisions and the day-to-day aspects of the workplace behavior of the franchisee's employees.

Critical to the Court's decision was whether the franchisor retained or assumed a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee's employees. If the franchisor did not retain/assume this general right of control, then the franchisor cannot be held vicariously liable based only on the imposition and enforcement of a uniform marketing and operational plan. Thus, the Court looked at Domino's Pizza franchise agreement and found that Domino's had no right or duty to control employment or personnel matters for the franchisee.

This case is important because:

- Unless franchisors exercise control over the manner and means by which their franchisees hire, fire, discipline, or manage their employees, they will not be held vicariously liable for employment and tort claims brought by their franchisees' employees.
- Franchisors may impose a comprehensive operating system designed to protect their trademarks, trade names, and goodwill without becoming vicariously liable for employment and tort claims brought by their franchisees' employees.
- It is in stark contrast to the National Labor Relations Board's position *vis-à-vis* McDonald's USA that McDonald's may be liable as a joint employer of its franchisees' employees.