Franchisor Not Liable for Sexual Harassment Claims Asserted by Franchisee's Employee, California High Court Rules

Article By:

Mark S. Askanas

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 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," the California Supreme Court has ruled, 4-3. <u>Patterson v. Domino's Pizza, LLC</u>, No. S204543 (Cal. Aug. 28, 2014). Accordingly, the Supreme Court reversed the Court of Appeal's decision and reinstated summary judgment in the franchisor's favor.

Background

Taylor Patterson worked as a server for a Sui Juris, LLC, a franchisee of Domino's Pizza, LLC. Daniel Poff owned Sui Juris and entered into a franchise agreement with Domino's. Poff interviewed and hired Patterson. Patterson reported to Renee Miranda, a male assistant manager, and to Poff.

Under the franchise agreement, Sui Juris retained responsibility for all employee recruiting and hiring. The agreement stated that all workers were employees of Sui Juris, not Domino's, and required Sui Juris to conduct all employee training.

Consistent with the agreement, Poff received all employment applications and conducted all employee interviews. He also conducted employee training, including sexual harassment prevention training. Poff informed his managers and Patterson that he had a "zero tolerance" sexual harassment policy and asked that employees inform him if they had any concerns regarding alleged harassment.

During her employment, Patterson alleged Miranda sexually harassed her. After she complained to Poff, he suspended Miranda while he investigated Patterson's complaint. Miranda eventually failed to report to work, and Poff considered him to have resigned. Shortly thereafter, Patterson resigned.

Patterson sued Sui Juris and Domino's for alleged sexual harassment under the FEHA. Domino's moved for summary judgment, arguing it could not be held liable for harassment because it was not Patterson's employer. The trial court agreed and granted summary judgment. The California Court of Appeal, however, reversed.

Applicable Law

The California Courts of Appeal have used traditional agency principles when considering whether a franchisor should be held liable for a franchisee's or a franchisee's employees' unlawful conduct committed in the course of the franchisee's business. In so doing, the courts have focused on the degree to which a particular franchisor exercised general "control" over the "means and manner" of the franchisee's operations.

Vicarious Liability

Patterson argued that Domino's operating systems effectively deprived Sui Juris of the means and manner to exercise control over its business; thus, the franchisor became the franchisee's agent, she asserted, and was vicariously liable for the harassment she suffered. The Supreme Court rejected Patterson's contention and reinstated summary judgment in favor of Domino's.

The Court noted that, although franchisors, such as Domino's, have comprehensive operating systems designed to protect their brands and to promote uniform operations, Domino's franchisees retain the autonomy to operate their businesses on a day-to-day basis, to hire and fire employees, and to regulate workplace behavior. The Court found the consideration of a franchise relationship for vicarious liability purposes must accommodate these "contemporary realities."

Thus, the Court ruled a franchisor cannot be held vicariously liable based only on "the imposition and enforcement of a uniform marketing and operational plan." A franchisor will be held vicariously liable, the Court instructed, only where it "has 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."

The Court observed that under the franchise agreement in this case, "Domino's had no right or duty to control employment or personnel matters for Sui Juris. In other words, Domino's lacked contractual authority to manage the behavior of Sui Juris's employees while performing their jobs, including any acts that might involve sexual harassment." In addition, Poff testified that he made all hiring and employment decisions, implemented his own sexual harassment prevention policy, and trained employees regarding it. Poff directed employees to raise harassment concerns with him, and Patterson, in fact, did so. Poff suspended Miranda following Patterson's complaint and investigated the matter. When Miranda failed to show up for work, Poff considered him to have resigned. There was no evidence Domino's was involved in any of those independent decisions. Accordingly, the evidence did not establish Domino's retained the "traditional right of general control" as an employer, and thus, no employment or agency relationship existed between Domino's and Sui Juris supporting Patterson's vicarious liability claims against Domino's.

The dissenters disagreed with the Court majority's application of the law to the facts in this case. Justice Kathryn M. Werdegar, joined by Justice Goodwin Liu and Associate Justice Victoria Gerrard Chaney (sitting by assignment), maintained that the facts showed Domino's could influence Sui Juris in its employment decisions and thus vicarious liability should have been imposed for the alleged harassment. She also maintained the majority's position was inconsistent with the FEHA's purpose and allowed Domino's to "opt out of the statutory duties of a California employer."

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