

California Supreme Court and NLRB Reach Conflicting Decisions Involving Fast Food Giants

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On August 28, 2014, the Supreme Court of California, in *Patterson v. Domino's Pizza, LLC*, held that a franchisor becomes potentially liable for the actions of a franchisee's employees *only if* the franchisor, "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." This is in stark contrast to the **National Labor Relations Board's** General Counsel decision to hold McDonald's franchisors liable for the alleged unfair labor practices of their franchisees. That action is explained in detail [here](#).

In *Patterson*, the plaintiff, an employee of a Domino's Pizza franchise, alleged she was sexually harassed and assaulted by the franchise's assistant manager. The plaintiff sued the assistant manager, the franchisee, and Domino's Pizza, LLC (the franchisor). The franchisor moved for summary judgment, arguing that there was no employment relationship between it and the employee, and therefore, it could not be held vicariously liable for the supervisor's misconduct towards her. The trial court agreed and dismissed the suit.

The California Court of Appeal disagreed with the trial court and reversed the decision. The court believed that a franchise contract and manager's guide that was provided to franchisees presented an issue of fact as to how much managerial independence the franchisee possessed.

On appeal, the California Supreme Court reversed the lower court's decision. In doing so, the Court explained that because Domino's Pizza did not have the right or duty to control employment or personnel matters for the franchisee, it could not be held liable for the supervisor's actions toward the employee. The Court clarified that the decision does not mean that franchisors can never be held accountable, but rather accountability is not automatic by the mere providing of a marketing and operational plan to franchisees.

This is a hotly contested legal and political issue and one we are sure to hear more about in the coming months. If the NLRB General Counsel decision stands, it could be a strong advantage for labor unions wanting to unionize the industry. It could also change the basic franchise model that has been in operation for decades. We will continue to follow developments related to this issue.

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