# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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## ***PATTERSON v DOMINO'S PIZZA, LLC*** Filed 8/28/14

**Motion for Summary Judgment; Respondeat Superior; General Right to Control vs. Totality of Circumstances; Franchisor Liability for Act of Franchisee's Employee under FEHA**

In September 2008, a company named Sui Juris acquired an existing Domino's Pizza franchise in Southern California. The franchise agreement was signed for Sui Juris by its sole owner, Daniel Poff (Poff). In November 2008, a young woman named Taylor Patterson (Patterson) was hired to serve customers at the Sui Juris store. In June 2009, Patterson filed this action against Rene Miranda, Sui Juris, and Domino's. She alleged the following facts: Miranda worked as a manager at the Sui Juris store. He sexually harassed her whenever they shared the same shift. After Miranda refused to stop, Patterson reported the problem to her father and to Poff. Patterson's father contacted the police. He also called Domino's "corporate office," and told someone in the human resources department about the sexual harassment his daughter had endured at the Sui Juris store. Patterson stayed away from work for one week, and then returned. She soon resigned. She perceived that her hours were reduced because she had reported Miranda's misconduct to others.

The complaint stated several causes of action. The first three counts invoked the Fair Employment and Housing Act (FEHA), and alleged sexual harassment, failure to take reasonable steps to avoid harassment, and retaliation for reporting harassment. (See Gov. Code, § 12900 et seq.) Otherwise, the complaint asserted common law counts for intentional infliction of emotional distress, assault and battery, and constructive termination against public policy under FEHA. Compensatory and punitive damages were sought.

In November 2010, Domino's sought summary judgment, or, alternatively, summary adjudication, against Patterson. Responding to allegations in the complaint, Domino's argued that it was not an "employer" or "principal," and could not be held vicariously liable for Miranda's misconduct as a result. Domino's maintained, however, that Sui Juris was a separate business run by Poff, and that he selected, managed, and disciplined his employees. Hence, Domino's claimed, the internal day-to-day control needed for an employment or agency relationship was lacking.

According to both a Domino's representative and Poff, the franchise contract removed from Domino's any right or duty to "implement a training program for [Sui Juris's] employees," or to "instruct [them] about matters of safety and security in the Store or delivery service area." Poff, in turn, agreed to be "solely responsible" for implementing programs to train his employees on the legal, safe, and proper performance of their jobs. Poff testified that when he first opened the Sui Juris store, he received guidance over three days from Claudia Lee (Lee), an "area leader" for Domino's. She "did nothing"

to help him train his employees. Poff implemented his own sexual harassment policy.

The franchise contract required the Sui Juris store to "at all times be under the direct, on-premises supervision" of Poff. He agreed to function as a full-time "manager," and not to engage in other business endeavors without first obtaining Domino's written consent.The contract stated that persons who worked in the store were Sui Juris's employees "and not [Domino's] agents or employees." Domino's disclaimed any right or duty to "operate the Store" or to "direct [Sui Juris's] employees" in their jobs. Those functions were made Poff's sole responsibility. Poff testified that he "suspended" Miranda "pending an investigation" into Patterson's sexual harassment complaint. The problem solved itself, Poff explained, when Miranda failed to show up for work.

Patterson disputed Domino's claim that it did not control Sui Juris's day-to-day operations, including employment matters. She asked the trial court to find a triable issue of fact in this regard. For support, Patterson relied primarily on the franchise documents and the role of Domino's area leaders. Patterson submitted the full franchise contract. It provided that Sui Juris agreed to sell Domino's products at a specific site for a 10-year term, and to pay a royalty fee (calculated as a percentage of weekly sales) in exchange for the right to use the "Domino's System" and related trademarks. Patterson also supplemented Domino's evidence by providing additional excerpts from Poff's deposition. Poff implied that he had little choice but to follow the advice of his area leader, Lee. He felt he always had to say "yes" to her, and he did not recall ever "intentionally" rejecting her

suggestions. Poff assumed that a franchisee who did not "play ball" with the area leader might be "in jeopardy," "in trouble," or "out of business."

Poff confirmed that Miranda was an assistant manager who supervised other employees. At some unspecified point after Patterson told Poff about Miranda's sexual advances, Poff relayed the information to Lee. In discussing the matter with Poff, Lee reportedly said, "You've got to get rid of this guy." Poff further testified that shortly after he first spoke with Lee about Patterson's complaint, Lee made a brief visit to the Sui Juris store. Lee expressed ongoing interest in the Patterson case. According to Poff, Lee asked whether he had training procedures and materials in place, and whether he would retrain his staff. Lee "made suggestions" in this regard. Poff testified that he was under pressure in running the business and meeting Domino's expectations at that time.

The trial court determined that Domino's did not control day-to-day operations or employment practices such that Sui Juris was an agent of Domino's, or that Miranda was an employee of Domino's. Patterson's action against Domino's was dismissed. On appeal, the court applied the same basic principles as did the trial court, but reached the opposite result. According to the Court of Appeal, reasonable inferences could be drawn from the franchise contract and the MRG that Sui Juris lacked managerial independence. The court listed many of the standards and procedures imposed by Domino's, and noted that they concerned far more than food preparation. The Court of Appeal also found evidence that Domino's meddled in Sui Juris's employment decisions. On this score, the court emphasized

Poff's testimony about following Lee's instructions, particularly her reference to firing Miranda. Hence, faced with Domino's contrary evidence (which it never described), the Court of Appeal found a triable issue of fact on Domino's role as an "employer" or "principal" for vicarious liability purposes. The judgment that had been entered in Domino's favor was reversed.

The California Supreme Court granted Domino's petition for review. The issue was limited to determining a franchisor's potential vicarious liability for wrongful acts committed by one employee of a franchisee while supervising another employee of the franchisee. There are no decisions by a California court addressing a franchisor's statutory or common law liability under FEHA for sexual harassment claims made by one employee of a franchisee against another employee (or supervisor) of the franchisee. Nor has the Supreme Court decided whether a franchisor may be considered an "employer" who is vicariously liable for torts committed by someone working for the franchisee.

In one of his last opinions, the soon to retire Justice Baxter explained that companies can market goods and services in more than one way. In an integrated method of distribution, the company uses its own employees and other assets to operate chain or branch stores. In doing so, it reaps the full benefits (e.g., maximizing profits) and bears the full burdens (e.g., investing capital and risking liability) of running a business. Franchising is different. It is a distribution method that has existed in this country in one form or another for over 150 years. However, it was not until the 1950's that a form of franchising called the "business format" model began to emerge.

Under the business format model, the franchisee pays royalties and fees for the right to sell products or services under the franchisor's name and trademark. In the process, the franchisee *also* acquires a business plan, which the franchisor has crafted for all of its stores. The business format arrangement allows the franchisor to raise capital and grow its business, while shifting the burden of running local stores to the franchisee. The systemwide standards and controls provide a means of protecting the trademarked brand at great distances. In the typical arrangement, the franchisee decides who will work as his employees, and controls day-to-day operations in his store.

Patterson's allegations against Domino's under FEHA center on the provision making it unlawful "[f]or an *employer*, . . . because of . . . sex, . . . to harass an employee." Broadly speaking, FEHA seeks to prevent workplace sexual harassment through the employer's adoption, use, and enforcement of sexual harassment policies.

Likewise, the venerable ***respondeat superior*** rule provides that "an *employer* may be held vicariously liable for torts committed by an employee within the scope of employment." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208) The doctrine contravenes the general rule of tort liability based on fault. Under certain circumstances, the employer may be subject to this form of vicarious liability even for an employee's willful, malicious, and criminal conduct. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-299.)

According to Patterson, the agency principles set forth in various appellate decisions support her claim that, because business-format franchisors wield detailed control over their franchisees' general operations, liability for personal harm sustained in the course of a franchisee's business should be borne by the franchisor. On the other hand, Domino's suggests that too literal an application of the traditional "agency" approach ignores the realities of modern franchising, which impose a meaningful division of autonomous authority between franchisor and franchisee. Domino's claims the critical factor is whether the franchisor had day-to-day control over the specific "instrumentality" that caused the alleged harm — here, sexual harassment of one employee of the franchisee by another.

Most early appellate courts reasoned that franchisors lacked sufficient control of their franchisees' day-to-day operations, including employment matters. (See *Kaplan v. Coldwell Banker Residential Affiliates, Inc*. (1997) 59 Cal.App.4th 741, 745-746) One of the more recent cases analyzing franchising in agency terms is *Cislaw v. Southland Corp*. (1992) 4 Cal.App.4th 1284 (*Cislaw*). There, the parents of a teenage boy filed a wrongful death action against Southland Corporation, which owned the 7-Eleven trademark and was the franchisor of 7-Eleven stores in California. The plaintiffs claimed their son died after using clove cigarettes sold at a 7-Eleven franchise owned by the Trujillos. Southland sought summary judgment asserting, inter alia, that it had no vicarious liability for the Trujillos' conduct because, as franchisees, they were independent contractors who had no agency or other relationship with Southland over which it had control. Based on the franchise contract, and the

declarations of Mrs. Trujillo and a Southland employee, the trial court granted summary judgment for Southland.

On appeal, the court stated the law as follows: "The general rule is where a franchise agreement gives the franchisor the right of complete or substantial control over the franchisee, an agency relationship exists. '**It is the right to control the *means and manner* in which the result is achieved that is significant in determining whether a principal-agency relationship exists**.' " (*Cislaw*, 4 Cal.App.4th 1284, 1288.) The court observed, however, that "the franchisor's interest in the reputation of its entire system allows it to exercise certain controls over the enterprise without running the risk of transforming its independent contractor franchisee into an agent. Such interests were identified as the protection of "trademark, trade name, and goodwill."

The *Cislaw* court concluded that Southland did not possess the "**all-important right to control the means and manner**" in which the store operated on a day-to-day basis. (*Cislaw*, 4 Cal.App.4th 1284, 1295.) First, the Trujillos made all inventory decisions. The evidence showed that the Trujillos alone decided to sell the clove cigarettes that allegedly killed the plaintiffs' son. Southland did not recommend the sale of this product to the Trujillos or advertise it to the public. Second, under the terms of the contract, the Trujillos made all employment decisions in their store. In other words, they had the sole right to employ and discharge staff as they saw fit. Third, and in more general terms, the contract in *Cislaw* described the Trujillos as "independent contractors" who controlled " 'the manner and means' " by which the store operated. (*Cislaw*, 4 Cal.App.4th

1284, 1294.)  In sum, the court found, as a matter of law, that no agency relationship existed between the franchisor and franchisee. Accordingly, it held that summary judgment had properly been entered against the plaintiffs on vicarious liability grounds.

Patterson contends that operating systems like the one used by Domino's protect far more than trademark, trade name, and goodwill, and deprive franchisees of the means and manner by which to assert managerial control.  Like the instant Court of Appeal, she reasons that the degree of control exercised by franchisors like Domino's makes each franchisee the agent of the franchisor for all business purposes, and renders each employee of the franchisee an employee of the franchisor in vicarious liability terms.

Justice Baxter determined as follows: The "means and manner" test generally used by the Courts of Appeal cannot stand for the proposition that a comprehensive operating system alone constitutes the "control" needed to support vicarious liability claims like those raised here.  As noted, a franchise contract consists of standards, procedures, and requirements that regulate each store for the benefit of both parties.  This approach minimizes chain-wide variations that can affect product quality, customer service, trade name, business methods, public reputation, and commercial image.

As explained, franchisees are owner-operators who hold a personal and financial stake in the business.  A major incentive is the franchisee's right to hire the people who work for him, and to oversee their performance each day.  A franchisor enters this arena, and becomes potentially liable for actions of the franchisee's

employees, only if 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. Any other guiding principle would disrupt the franchise relationship.

Patterson contends that rejection of her views would immunize franchisors from vicarious liability for enterprise-related harm. Such an outcome, she maintains, contravenes the public interest in protecting employees from sexual harassment, and in securing compensation from companies that can absorb the loss. However, as Domino's suggests, these policy arguments lose force when the party from whom compensation is sought did not directly control the workforce, and could not have prevented the misconduct and corrected its effects. (See *State Dept.*, 31 Cal.4th 1026, 1044.) Justice Baxter cannot conclude that franchise operating systems *necessarily* establish the kind of employment relationship alleged here. A contrary approach would turn business format franchising "on its head."

The majority concludes that nothing it asserts is materially at odds with the analysis that would apply if examining plaintiff's three FEHA claims in terms of the principles developed under this statutory scheme *outside* of the franchising context. In general, FEHA is designed to prevent and deter unlawful employment practices, and to redress their adverse effects. Essential to plaintiff's statutory claims is the existence of "an employment relationship." In other words, and as noted above, Domino's statutory liability for the acts of sexual harassment that allegedly occurred at the Sui Juris store

depends on whether Domino's was an "employer" of both plaintiff and the harasser, Miranda.

There are few California cases defining an "employer" under the FEHA provisions invoked here. But, it appears, **traditional common law principles of agency and respondeat superior supply the proper analytical framework under FEHA, as they do for franchising generally.** Courts in FEHA cases have emphasized "the control exercised by the employer over the employee's performance of employment duties." (*Bradley v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1612, 1626,) This standard requires "a comprehensive and immediate level of 'day-to-day' authority" over matters such as hiring, firing, direction, supervision, and discipline of the employee.

As discussed above, Domino's lacked the general control of an "employer" or "principal" over relevant day-to-day aspects of the employment and workplace behavior of Sui Juris's employees. Under the contract, Sui Juris paid for the right to sell Domino's products using the company's business format system, including the contract and the MRG. The contract said there was no principal-agent relationship between Domino's and Sui Juris. The latter also had no authority to act on the former's behalf. Notwithstanding any training, support, or oversight on Domino's part, Sui Juris agreed to act as an "independent contractor."

Likewise, the contract stated that persons who worked in the Sui Juris store were the employees of Sui Juris, and that no employment or agency relationship existed between them and

Domino's. Domino's disclaimed any rights or responsibilities as to Sui Juris's employees. Hence, nothing in the contract granted Domino's any of the functions commonly performed by employers. All such rights and duties were allocated to Sui Juris. They included, but were not expressly limited to, "recruiting, hiring, training, scheduling for work, supervising and paying" persons employed by Sui Juris.

The contract also stated that Domino's had no duty to operate the Sui Juris store. Nor did Domino's have the right to direct Sui Juris's employees in store operations. Rather, the contract made Sui Juris solely responsible for managing its employees with respect to the proper performance of their tasks. Poff agreed to provide close, full-time supervision in this regard. Domino's disclaimed liability under the contract for any damages arising out of the operation of the store. Thus, under the foregoing terms, 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.

Evidence about the training of Sui Juris's employees is more nuanced, but did not indicate control over relevant day-to-day aspects of employment and employee conduct. It appears the parties did not follow the literal language of the contract placing sole responsibility on Sui Juris for handling *all* training programs for its employees. Domino's provided new employees with orientation materials in both electronic and handbook form. Such programs

supplemented the training that Poff was required to conduct. Lee, Poff's area leader, did not help him train anybody.

However, *with respect to training employees on how to treat each other at work, and how to avoid sexual harassment*, it appears that Sui Juris, not Domino's, was in control. What is clear is that Poff implemented his *own* sexual harassment policy and training program for his employees. He adopted a zero tolerance approach, among other things. Poff held meetings in which he personally and vigorously trained his managers about sexual harassment. He also installed his policy on the PULSE computer system for other employees to view. Of particular relevance is that Poff's sexual harassment policy and training program came with the authority to impose discipline for any violations. The record shows that Poff, not Domino's, wielded such significant control.

Like the dissenting opinion, Patterson emphasizes evidence that Lee said Poff should "get rid" of Miranda. The majority emphasizes it is not clear when this statement was made. For several reasons, however, the Justices conclude no reasonable inference can be drawn that it was intended or interpreted to mean that Poff had no choice in the matter, that Domino's was in charge, or that consequences would ensue if Poff did not follow Lee's advice.

As noted above, Poff acted with the obvious understanding that the decision whether and how to discipline Miranda was his alone to make. In addition, Poff acknowledged that Lee's statement was not accompanied by a specific threat, express or implied. She never stated that Poff would risk any sanction if he did not terminate

Miranda's employment. Indeed, her statement left Poff with no negative memory about possible repercussions at all. When Lee arrived at the Sui Juris store a short time later, Miranda's disciplinary fate was not discussed. The only concern was whether and how to retrain the Sui Juris staff. By Poff's own account, Lee made helpful training suggestions, not demands.

No reasonable inference can be drawn that Domino's, through Lee, retained or assumed the traditional right of general control an "employer" or "principal" has over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee's employees. Hence, there is no basis on which to find a triable issue of fact that an employment or agency relationship existed between Domino's and Sui Juris and its employees in order to support Patterson's claims against Domino's on vicarious liability grounds.

Justice Baxter explained that he did not mean to imply that franchisors, including those of immense size, can never be held accountable for sexual harassment at a franchised location. A franchisor will be liable if it has retained or assumed the right of general control over the relevant day-to-day operations at its franchised locations that we have described, and cannot escape liability in such a case merely because it failed or declined to establish a policy with regard to that particular conduct. The holding is limited to determining the circumstances under which an employment or agency relationship exists as a prerequisite to pursuing statutory and tort theories like those alleged against the franchisor here.

The judgment of the Court of Appeal is reversed.

In dissent, Justice Werdeger, joined by two other Justices, wrote separately to express her disagreement with the majority's application of the law to the facts of the case. She noted that the common law offers various definitions of employment. Consequently, courts in FEHA cases have found "no magic formula for determining whether the requisite employment relationship exists. The prevailing view is to **consider the totality of the circumstances**, reflecting upon the nature of the work relationship between the parties, and placing emphasis on the control exercised by the employer over the employee's performance of employment duties." (see, *Bradley*, 158 Cal.App.4th at p. 1626) She states that the majority, offering its own synthesis of the common law, asks whether the alleged employer "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."

Fidelity to a multi-factored**, totality of the circumstances test** inevitably means that " '[t]he precise contours of an employment relationship can only be established by a careful factual inquiry.' " (*Vernon*, 116 Cal.App.4th at p. 125.) That a franchisor is not automatically the employer of its franchisee's employees, irrespective of the details of the parties' relationship, necessarily follows. So, too, does it follow that a franchisor may under the circumstances of the parties' relationship in fact be an employer. The outcome depends on the factual inquiry.

For example, Justice Werdeger notes that a franchisor, pursuing its legitimate interest in ensuring that customers enjoy a similar experience in each franchised location, may implement the franchise agreement in various ways, including ways short of day-to-day oversight, to exercise control over employee selection, training, personal appearance, interaction with customers, and compliance with in-store procedures. This **retention of control by the franchisor**, enforced by regular inspections and the threat that a noncompliant franchisee will be placed in default, presents occasions for the franchisor to act as an employer by forcing the termination of problematic employees. The majority finds that Domino's successfully walked this tightrope between enforcing contractual standards and becoming an employer by leaving to Poff all decisions about the discharge of his employees, even when cause for discharge existed. Because the case has not been tried, we will never know whether Domino's succeeded or not. Unlike the majority, the dissent would hold that plaintiff has raised a triable issue of fact.

Asked whether Domino's area leader Claudia Lee had "ever told you that you needed to fire any employees," Poff answered "Yes." Those employees were Dave Knight, a manager who had delivered non-Domino's food to schools, and Rene Miranda, plaintiff's alleged harasser. Asked whether Poff rather than Lee had "ultimately ma[d]e the decision to terminate" Knight, Poff answered that he "had to pull the trigger on the termination, but it was very strongly hinted that there would be problems if I did not do so." Asked "[h]ow was it strongly hinted," Poff explained that "[t]he area leaders would pull you into your office at the store, for example, and tell you what they

wanted. If they did not get what they wanted, they would say you would be in trouble." In fact, Lee indicated to Poff that not firing Knight might cause Poff to lose his franchise. Lee candidly testified she told Poff that, " '[i]f you have anyone that works for you that is damaging the brand or going to cause you to lose your franchise agreement, that person is not the person you want working for you.' And I told him, 'Right now, Dave [Knight] is hurting your franchise.' " Poff fired Knight a few weeks later.

This interaction between Poff and Lee provides essential context for their later interaction concerning Miranda. Upon learning of plaintiff's allegations of harassment against Miranda, Lee told Poff, "You've got to get rid of this guy." Asked how he had answered, Poff testified that his "response always to the area leader was 'yes' or 'I'll get it done' or, you know, 'Give me a little time.' I never said 'no' intentionally to [Lee]." Poff could not "recall specifically" whether Lee "allude[d] to anything that would happen to [Poff] if [he] didn't fire Miranda," but it was hardly necessary for Lee to repeat the warning she had recently given Poff that the failure to follow her wishes concerning the termination of a problematic employee could lead to the loss of his franchise. Consistently with his statement that he "never said 'no' " to Lee, Poff confirmed that he "never t[old] her over the phone or to her face that [he] did not intend to fire Miranda." A franchisee who did not follow Lee's suggestions, Poff testified, was "out of business very quickly." Ultimately, Miranda's failure to return to work made it unnecessary for Poff to risk the loss of his franchise by refusing Lee's demand.

Under the common law, " '[p]erhaps no single circumstance is more conclusive to show the relationship of an employee than the right of the employer to end the service whenever he sees fit to do so.' " (*Burlingham v. Gray* (1943) 22 Cal.2d 87, 100.) While no one factor is determinative, the power to discharge an employee offers " 'strong evidence' " both of the fact of control and of the ultimate existence of an employment relationship. (*Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 177) This is because the employer's power to terminate the employee's services gives the employer the means of controlling the employee's activities (see *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 531) and because, as a matter of logic, a person's reservation of the power to terminate another's employee "is *incompatible with the full control of the work by another*" (*National Auto. Ins. Co. v. Ind. Acc. Com.* (1943) 23 Cal.2d 215, 220). For these purposes "[i]t is not essential that the right of control be exercised or that there be actual supervision of the work of the [employee]." "**What matters is whether the hirer 'retains all *necessary* control' over its operations**." (*Ayala*, at p. 531)

In summary, if Domino's relationship with Poff gave it the power to force him to fire his employees, then those employees were subject not just to Poff's control but also to Domino's and thus were the employees of both. Viewing the evidence in the light most favorable to plaintiff, as must be done when reviewing an order granting a defense motion for summary judgment (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96), the record would clearly permit the trier of fact to conclude that Domino's retained and exercised that power.

Justice Werdeger explains that her disagreement with the majority is not so much with its statement of the applicable law as with its application of the law to the facts. In concluding Domino's did not have the power to force Poff to discharge his employees, the majority places too much emphasis on the terms of the franchise agreement and not enough on the parties' real world interaction. The language of the governing contract is only "one factor to be considered in determining the nature of the employment relationship" and "is not controlling." (*Bradley*, *supra*, 158 Cal.App.4th at p. 1628.) This is because the Court's principal responsibility in FEHA cases is not to give effect to private contracts intended to shift or avoid liability, nor is it to promote the use of franchising as a business model or to avoid "disrupting the franchise relationship." Instead, their duty is to vindicate the Legislature's "fundamental *public* interest in a workplace free from the pernicious influence of sexism." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 90) When this task requires us construction of FEHA's definition of employer, the Justices are bound by the Legislature's command that "[t]he provisions of [FEHA] shall be construed liberally for the accomplishment of [its] purposes . . . ." (§ 12993, subd. (a).) To emphasize contractual language intended to shield a franchisor from employment-related claims over evidence the franchisor in practice retained and exercised the power to terminate the franchisee's employees tends to undermine FEHA's goals by permitting the franchisor, in effect, to **opt out** of the statutory duties of a California employer.

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