Lathrop GPM

BLOGS
Vicarious Liability

Franchisor Held Not Liable for Franchisee's Alleged Discriminatory Acts

The United States District Court for the Eastern District of Louisiana recently issued an opinion in *Matthews v. International House of Pancakes, Inc.*, 2009 WL 211788 (E.D. La. Jan. 23, 2009), that serves as a reminder that franchisors should take care not to establish or control their franchisees' day-to-day employment policies, practices, or decisions. Two plaintiffs sued various International House of Pancakes franchisor entities, claiming racial discrimination, gender discrimination, and/or sexual harassment by a manager of a restaurant owned by an IHOP franchisee. The federal district court dismissed the plaintiffs' claims against the franchisor entities on the grounds that those entities had not engaged in any conduct that might make them an "employer" under employment discrimination laws.

In reaching this conclusion, the court observed that, in deciding whether a franchisor's actions may give rise to a legal duty to a franchisee's employees, courts have generally distinguished between whether the franchisor has *recommended* as opposed to *required* certain employment practices. If the franchisor has merely made recommendations, liability typically does not arise. Liability may arise, however, if the franchisor has required a franchisee to adopt certain policies, *i.e.,* to train, hire, or supervise employees in a certain way, or has reserved the right to be involved in employment decisions. Applying this standard, the court held that the IHOP entities had presented unrefuted evidence that they did not establish or control the franchisee's day-to-day employment policies or activities, and, therefore, they were not the plaintiffs' "employer." For essentially the same reasons, the court also held that the plaintiffs had failed to establish that the franchisor and franchisee could be aggregated together and treated as a "single employer" for liability purposes.