A Timely Analysis of Legal Developments

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New York State's highest court clarifies that neither New York State nor New York City Human Rights Laws are applicable to non-residents unless the impact of the discrimination is felt in New York.

Dustin' Off Hoffman v. Parade Publications

By Andrew Marks and Shannon Morales

Last August we reported on several court decisions expanding the scope and application of the New York City Human Rights law. In one such case, *Hoffman v. Parade Publications*,[1] the New York Appellate Division, First Department had ruled that a Georgia-based employee had standing to contest his separation under the New York State and City discrimination statutes because the layoff decision was made at the company's New York City headquarters. The intermediate appellate court rejected a line of authority requiring an impact within the City (or New York State)[2] and held that a non-resident plaintiff need only allege that the discriminatory decision was made in New York to invoke the protection of state and local law.[3]

On July 1, 2010, a closely divided New York Court of Appeals reversed *Hoffman v. Parade Publications* and reined in the boundaries of the New York City Human Rights Law (NYCHRL) as well as the state law (NYSHRL). The Court of Appeals explained that the "rule that a plaintiff need only plead and prove that the employer's decision to terminate was made in the City is impractical, would lead to inconsistent and arbitrary results, and expand the NYCHRL protections to non-residents who have, at most, tangential contacts within the City."

Focusing on the specific language of the NYCHRL, which repeatedly refers to protecting the "City's inhabitants" and "persons in the city of New York," the court held that "the impact requirement is appropriate where a non-resident plaintiff invokes the protection of the City Human Rights Law."[4] "[T]he impact requirement is relatively simple for courts to apply and litigants to follow, leads to predictable results, and confines the protections of the NYCHRL to those who are meant to be protected – those who work in the City." Similarly, the "obvious intent of the State Human Rights Law is to protect 'inhabitants' and persons 'within' the state ...."[5] Further, the NYSHRL expressly protects State residents from discrimination out-of-state committed by State residents.[6] Therefore, the court held, "a non-resident must plead and prove that the alleged discriminatory conduct had an impact in New York."

For New York City based employers, the Court of Appeals' decision is significant. New York City headquartered companies no longer face exposure to the broader liability standards and available damages under NYCHRL when making decisions concerning employees living and working outside the City limits. However, the loose language of the decision suggests that city residents working outside the city may be protected by City law if the discriminatory decision is made within the city. Therefore, if a New York City headquartered company is considering terminating an employee working outside New York, it should consider whether the employee lives within the five boroughs to determine whether the protections of the NYCHRL may apply.

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[1] 878 N.Y.S.2d 320 (1st Dept. 2010).

[2] *See, e.g., Shah v. Wilco Sys.*, 27 A.D.3d 169, 806 N.Y.S.2d 553, 558 (1st Dept. 2005) (holding New Jersey resident working for New York City based company in New Jersey could not state a claim under New York City Human Rights Law).

[3] The New York court was not alone. See, November 2009 Littler ASAP, *Court of Appeals Expands Reach of D.C. Anti-Discrimination Law to Applicants and Employees Outside of D.C.*

[4] *Hoffman v. Parade Publications*, No. 10-132, slip op. at **2-3 (N.Y. 2010).

[5] *Id.* at *4.

[6] New York Executive Law § 298-a.