

## N.J. HUMAN RESOURCES LAW ALERT™

A publication of Saiber Schlesinger Satz & Goldstein, LLC's Employment Law Group  
Sean R. Kelly, Esq., Editor

### **Worker Supplied by Independent Contractor May Be Considered Employee for Purposes of LAD Claim**

In a recent decision by a New Jersey appellate panel, the Court held that an individual who was supplied by an independent contractor and assigned to work at a State facility could be considered an employee of the State, and may therefore be entitled to assert a claim against the State under the Law Against Discrimination (LAD).

Plaintiff was a licensed clinical social worker employed by a medical services company. The company had a contract with the State to provide mental health services for prison inmates. In accordance with that contract, the medical services company assigned plaintiff to work at a particular State prison. She alleged that she was severely harassed by her supervisor, ultimately causing her to take an extended medical leave of absence and later to leave the prison system and accept an assignment to a different State office.

When plaintiff sued the State, the trial court entered summary judgment in favor of the State, dismissing plaintiff's LAD claim on the ground that she was not a State employee.

On appeal, the New Jersey state appellate court reversed the summary judgment and remanded the case for trial. The appellate court explained that although an employment relationship is indeed a prerequisite to a LAD claim, the Court is required to look beyond the "label" attached to the working relationship in order to determine whether the nature of the relationship is one that is within the scope of the statute. In making that determination, the Court identified many factors to be considered, but most

importantly (1) the extent of employer control, (2) the worker's economic dependence on the relationship, and (3) the degree of integration of the employer's business with that of the person doing the work at issue.

Applying the relevant factors in this case, the Court concluded that the State exercised a substantial degree of control over plaintiff's work; that plaintiff was highly dependent upon the work relationship; and that the prison's provision of psychiatric services to its inmates was highly integrated with the work performed by plaintiff. Therefore, even though plaintiff might properly be considered an employee of the independent contractor for other legal purposes (e.g., payroll, annual leave, retirement benefits, social security taxes, etc.) she could nonetheless potentially be considered an employee of the State for purposes of application of the LAD. The question of whether plaintiff should be considered an employee of the State is one of the issues that would need to be determined at trial. (*Hoag v. Commissioner*, N.J. App. Div. 11/27/07).

### **Conclusion**

Labels can be deceiving. The fact that a particular worker receives her paycheck from Company A does not mean that she cannot be considered an employee of Company B for various other employment purposes – including potential liability under state and federal employment discrimination statutes. This principle has significant application not only to independent contractors, as in the case discussed above, but also to, e.g., employee leasing companies and temp agencies.

## **“Whistle Blower” Claim Requires Only That Plaintiff Have a “Reasonable Belief” Employer's Conduct Is Unlawful**

A state appellate court recently emphasized the expansive scope of New Jersey's “whistle blower” statute, known as the Conscientious Employee Protection Act (“CEPA”). Specifically, the Court held that an employee who incorrectly who accused his employer of unlawful conduct may nonetheless have a valid CEPA claim so long as he had a “reasonable belief” that his employer's conduct was unlawful.

Plaintiff, an employee of a non-profit animal shelter, raised concerns with his supervisor about the shelter “adopting-out” a dog that had attacked its previous owner. Notwithstanding the employee's concerns, the shelter approved a new owner's adoption of the dog, following which the dog mauled the new owner to death. Shortly after plaintiff cooperated in an internal investigation by outside counsel, plaintiff's employment was terminated.

Plaintiff thereafter brought a CEPA suit against the shelter. At trial, plaintiff's case was dismissed based on the trial judge's conclusion that the shelter, as a non-profit entity, was exempt from the operation of the Consumer Fraud Act, and therefore could not be liable for violation of any public policy or law by adopting-out the dog.

On appeal, the state appellate court reversed and remanded the trial court's dismissal of plaintiff's claim. The appellate court explained that the New Jersey State Legislature had repeatedly recognized the serious problems associated with unprovoked dog attacks, and that plaintiff might therefore have had an objectively reasonable belief that the shelter's actions were incompatible with the State's announced public policy. The appellate court further explained that the fact that the shelter may not be liable under the Consumer Fraud Act is not fatal to plaintiff's CEPA claim. Under CEPA, a plaintiff need not show that the employer did in fact violate a law, but only that the plaintiff reasonably believed that the employer had done so. (Turner v. Associated Humane Societies,

## **Conclusion**

New Jersey courts have repeatedly made the same point in a variety of contexts. A plaintiff employee asserting a CEPA claim is not held to the standard of knowledge of a legal professional. The employee may be incorrect about the law and the legality of the employer's conduct, but the employee will still have a valid CEPA claim so long as the employee's belief was objectively reasonable.

\*\*\*\*\*

## **SSS&G's Employment Law Practice Group**

Saiber Schlesinger represents management in all varieties of employment law matters, including discrimination claims, unfair competition cases and compensation disputes, before state and federal courts, administrative agencies and arbitration panels. The firm's Employment Law Practice Group, consisting of five partners and seven associates, counsels and defends companies large and small, national and multinational, private and public.

**Sean R. Kelly, Esq.**, a Partner in the firm's Employment Law Practice Group, has over 28 years experience in advising and defending employers. A graduate of Yale College and Georgetown Law, Mr. Kelly is a former Master of the Sidney Reitman Employment Law Inn of Court, is Certified by the New Jersey Supreme Court as a Civil Trial Attorney, and frequently publishes and lectures on employment law before business and legal professional groups.

For more information on any of the items appearing in the Alert™ you may contact Mr. Kelly at the phone number or e-mail address listed below.

Also, if you know of others in the New Jersey Human Resources community who we should add to our mailing list, please send their mailing addresses to [srk@saiber.com](mailto:srk@saiber.com).

\*\*\*\*\*

*The information provided in this alert is for general information purposes only. The information provided is not personalized legal advice. The views offered in this alert may not be suitable for everyone. The reader should review the information provided herein in light of his or her own particular situation and with the advice of his or her own legal counsel.*

Sean R. Kelly, Esq.  
Saiber Schlesinger Satz & Goldstein, LLC  
One Gateway Center, 13th Floor  
Newark, NJ 07102  
P 973-622-3333 F 973-622-3349  
[srk@saiber.com](mailto:srk@saiber.com)  
[www.saiber.com](http://www.saiber.com)