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NJLAD Applies, Even Though Employer Is Headquartered in NY

The U.S. District Court for the District of New Jersey recently denied the motion of a New York – based employer to dismiss its employee's claim under the New Jersey Law Against Discrimination.

The Court explained even though the employer's headquarters was outside of New Jersey and the employer's management made its decisions concerning the employee at the New York location, those facts alone do not shield the employer from the application of the NJLAD. The key factor in determining the applicability of the NJLAD, the Court explained, is the location of the employee's employment at the time of the alleged discriminatory conduct. In this case, that was New Jersey. (Schneider vs. Sumitomo Corp. of America (U.S. D.N.J., June 14, 2010.))

Conclusion

This decision serves as an important reminder to the many employers who have operations in New Jersey but have their main offices elsewhere. In such circumstances, employment decisions are often made by people who lack familiarity with New Jersey employment law, and who may not consider that New Jersey employment law will apply to the decisions they make concerning their New Jersey employees. The out-of-state employer is especially in need of local New Jersey legal counseling before taking action that could expose the employer to liability in this State.

One Win and One Loss for Disability Discrimination Plaintiffs

A recent pair of appellate decisions from the New Jersey state appellate courts illustrate when a disability discrimination plaintiff has a potentially legitimate claim, and when he does not.

In Clarke vs. Atlantic City Board of Education (App. Div., June 10, 2010), the Court reversed a trial court's dismissal of a disability discrimination complaint and sent the case back for trial. The Court explained that the employee, an assistant superintendent of a public school, had adequately made out a case of disability discrimination by alleging several minor items of retaliatory actions which, considered as a whole, could be seen by a jury as an adverse employment action. The Court also held that the employee, who uses a cane and a power scooter, could properly premise his claim of handicap discrimination on his employer having relocated his office to the sixth floor.

By contrast, in Hires vs. City of Atlantic City (App. Div., May 4, 2010), the Court affirmed the trial court's entry of summary judgment in favor of the employer, Atlantic City. The employee, a former police officer, claimed that he was "psychiatrically disabled from a nervous breakdown brought on by job stress caused by, amongst other things, the gruesome nature of the work." The Court noted that, by the employee's own admission, he was completely disabled and thus unable to perform his job duties, regardless of any accommodation the City might offer. That fact by itself bars the police officer's claim of disability discrimination.

Conclusion

Disability discrimination claims may often be disposed of early in the litigation due to the employee's failure to plead the required elements of the claim. Specifically, he must plead, and ultimately produce evidence, that he was qualified for the position; that the employer took "an adverse employment action" against him; that he is disabled, but nonetheless would be able to perform his essential job duties with reasonable accommodation; and that his employer failed to engage in an interactive process of communication with the employee or otherwise failed to implement an appropriate accommodation for his disability. If the employee's allegations or evidence fails to address one or more of these elements, the employer may be in the position to have the case disposed of without a trial.

Courts Reject Claims by Hyper-Sensitive Plaintiffs

Two courts in New Jersey recently rejected claims by plaintiffs because the courts concluded the alleged actions by the employee's co-workers were simply not egregious enough to support a legal claim.

In Anastasia vs. Kushman & Wakefield (U.S. D.N.J., June 14, 2010), the Federal District Court granted an employer's motion for summary judgment dismissing an employee's claim of a sexually hostile work environment. Although there was evidence that a co-worker had made unwanted advances toward the female employee, the Court concluded that the co-worker's communications to the employee were not severe or pervasive enough to support a claim of hostile work environment. The Court explained that more egregious conduct by the co-worker would be required to support an employee's claim that she was constructively discharged from her employment, as the employee asserted in this case.

Similarly, in Dettelbach-Hook vs. Saint Peter's Haven for Families (App. Div., June 10, 2010), the New Jersey Appellate Division affirmed the trial court's dismissal of the employee's defamation complaint. The Court noted that the employee had claimed in her Complaint that she had been subjected to obscenities, vulgarities, insults, name-calling and other verbal abuse in the workplace. Nonetheless, the Court explained that not all such words constitute the kind of defamation that can support a legal claim. Where such statements are not specifically directed at the employee, or are not communicated to third parties, or are not sufficiently egregious, they cannot support a claim of defamation.

Conclusion

Not all bad behavior gives rise to a legal remedy. Before an employee may establish a case of hostile work environment or defamation based solely on the words spoken by co-workers, the employee must make a threshold showing that the statements were seriously offensive.

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Saiber LLC's Employment Law Practice Group

Saiber 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 six 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 30 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 skelly@saiber.com.

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