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LABOR & EMPLOYMENT DEPARTMENT

ALERT

New York's Highest Court Shortens Reach of NY's Discrimination Laws

By Steven K. Ludwig

In order for a non-resident plaintiff to assert a claim under New York's discrimination laws, a plaintiff must plead and prove the alleged discriminatory conduct had an impact in New York, according to a 4-3 decision reached by the New York Court of Appeals on July 1, 2010, in the case of *Hoffman v. Parade Publications*.

In *Hoffman,* the plaintiff attended quarterly meetings in New York City, was managed and had negotiated the employment contract with the city, and had the employment termination decision made in and communicated from a telephone call originating in midtown Manhattan. The plaintiff, however, worked in Georgia, and thus the impact of the employment loss was in Georgia and the plaintiff was stopped from asserting a discrimination claim under New York State's and New York City's civil rights laws.

In order for a non-resident plaintiff to avail him/herself of these New York laws, the alleged discriminatory conduct must have been felt within its borders. If a non-resident plaintiff works in New York, he/she still can assert claims under New York's civil rights laws. The reach of New York City's Human Rights Law extends to all five of its boroughs. But for non-residents of the Empire State, the reach of its Human Rights Law stops at its borders.

New York State's civil rights statute has an extraterritoriality provision that enables state residents to also bring a discrimination claim against resident persons and domestic corporations that commit an unlawful discriminatory practice outside of the state. The statute also enables New York to prohibit a non-resident person or foreign corporation from doing business within the state if an unlawful discriminatory practice has been committed or is "about to be committed" outside of the state. It is unclear, though, how New York's Human Rights Division has the wherewithal to investigate these extraterritorial allegations.

The Court of Appeals – narrowly – has given employers one less thing to worry about. However there are still a multitude of overlapping claims that a savvy plaintiff can assert under federal law, state law, and often local ordinances. The joy of federalism.

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