New York Court Of Appeals Roundup

Nonresidents Protected From Employment Discrimination by NY Human Rights Laws

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In a unanimous decision in *Syeed v. Bloomberg*, written by Judge Madeline Singas, the Court of Appeals answered a certified question from the U.S. Court of Appeals for the Second Circuit by holding that the New York City and New York State Human Rights Laws banning employment discrimination protect out-of-state residents who are not yet located or employed in New York but who sought an opportunity to work in New York.

The plaintiff alleged that she was subjected to discrimination on the basis of race and sex while working for the defendant in Washington, D.C. The defendant is a privately held company with global headquarters in New York City. In 2018, after determining that she could no longer advance her career in Washington, D.C., the plaintiff applied for various positions that would require her to work in the defendant's New York offices. One of the positions was ultimately filled by a man who allegedly had less practical experience and less formal education than the plaintiff.

The plaintiff was allegedly told by her boss in Washington, D.C. that the defendant decided not to convert the New York position to a "diversity slot." The plaintiff understood this to mean that she would only be promoted by the defendant for diversity reasons. Accordingly, she informed her boss that she was being constructively discharged and she could no longer work for the defendant because of the discrimination she encountered. The plaintiff left the defendant's employ and moved to California.

Two years after leaving the defendant's employ, the plaintiff commenced a class action in New York state court alleging employment discrimination based on the defendant's alleged policy of placing women and minorities in pre-designated roles that pay less and are less likely to lead to promotions. In addition to the class claims, she asserted individual claims under the New York City and State Human Rights Laws (the Human Rights Laws) arguing that the defendant's denial of her promotions were the result of discrimination on the basis of her race and sex.

The defendant removed the case to federal court and Judge Gregory H. Woods of the U.S. District Court for the Southern District of New York granted the defendant's motion to dismiss all claims. *Syeed v. Bloomberg*, 568 F. Supp. 3d 314 (S.D.N.Y. 2021). Woods interpreted the New York Court of Appeals decision in *Hoffman v. Parade Publications*., 15 N.Y.3d 285 (2010), which required that the discriminatory behavior have an impact in New York as limiting the applicability of the Human Rights Laws to those who live or work in New York. *Bloomberg,* 568 F. Supp. 3d at 331.

The defendant's motion to dismiss was granted because the plaintiff lived and worked in Washington, D.C. when she applied for and was denied the New York-based positions. Woods acknowledged, however, that at least two other judges in the Southern District had reached the opposite conclusion on analogous facts.

On appeal, the Second Circuit determined that *Hoffman* did not conclusively establish whether a nonresident plaintiff could allege sufficient personal impact in New York in discriminatory failure-to-hire or failure-to-promote cases. 58 F.4th 64 (2d Cir. 2023). According to the Second Circuit, *Hoffman* could

be read to imply that nonresidents can satisfy the impact requirement only if they currently work in New York. 58 F.4th at 68. However, it could also be read to imply that those who would work in New York absent discrimination might satisfy the impact test.

Given the policy determinations involved and the lack of a controlling decision, the Second Circuit reserved decision and certified the following question to the Court of Appeals: "Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds."

The Court of Appeals accepted the question and answered it in the affirmative.

The court began its analysis by recounting that the Human Rights Laws prohibit employment discrimination based on, among other grounds, race, sex or gender, and that courts are required to liberally construe the Human Rights Laws and narrowly construe exceptions to and exemptions from those statutes in order to accomplish the remedial purposes they serve, including maximizing deterrence of discriminatory conduct.

Indeed, as the court has held before, courts must construe the Human Rights Laws broadly in favor of discrimination plaintiffs to the extent that such a construction is reasonably possible.

With respect to its prior decision in *Hoffman*, the court explained that in that case, the plaintiff was a Georgia resident who worked for a company headquartered in New York City. After the plaintiff was terminated, he commenced an age discrimination action in New York claiming that his termination violated the Human Rights Laws and that the decision to fire him was made in New York.

In that case, the court concluded that nonresidents of New York must plead and prove that the alleged discriminatory conduct had an impact within New York. *Hoffman*, 15 N.Y.3d 285 (2010). This impact requirement does not exclude out-of-state residents from the protection of the Human Rights Laws; rather, the impact test expands the protections to nonresidents who either work in New York or those who state a claim that the alleged discriminatory conduct had an impact in New York. 15 N.Y.3d at 291-92.

The court held that the Georgia plaintiff failed to state a cause of action because (1) he was not a resident of or employed in New York and (2) he failed to allege that the alleged discrimination had any impact in New York.

Turning to this case and the certified question, the Court of Appeals concluded that the Human Rights Laws protect nonresidents who proactively sought a job opportunity that would require them to work in New York state or New York City.

It distinguished *Hoffman* because there the plaintiff worked in Georgia and did not seek to become an employee in New York. He sued his employer in New York because that is where the termination decision was made, not because he sought a position in New York. In fact, the Georgia plaintiff wanted to continue to work in Georgia, unlike the plaintiff in the instant case who sought positions that would have required her to work in New York. The plaintiff here lost the chance to work, and perhaps live, in New York.

According to the court, when courts liberally construe the statutory language, a prospective employee who was denied a job opportunity to work in New York as a result of discriminatory conduct fits well-within the protection of the Human Rights Laws.

The court next considered the policy implications and concluded that they too support this conclusion. The Human Rights Laws declare that the existence of prejudice and discrimination threatens the rights and privileges of New Yorkers and the institutions and foundations of our free society in addition to the targeted individual. For example, the state and city are deprived of economic and civic contributions from

individuals who suffered discrimination, as well as the more diverse workforces and communities that the individuals would have advanced absent discrimination.

This decision represents the court's unanimous view that the Human Rights Laws extend protections to nonresident individuals who are applying for jobs that will require them to work in New York City or New York state. The court did note, however, that the plaintiff did not ask it to revisit *Hoffman*. That case was a 4-3 decision issued before any current member joined the court. We will have to await a future case to see if the current judges on the court will accept an invitation to revisit *Hoffman* and, if so, what they will decide.

Additionally, because the court's analysis in this case was based on an assumption that the applied-for positions would require the plaintiff to be physically present in New York, this case does not necessarily address the question of whether the Human Rights Laws apply in a situation where the employee would be allowed to work remotely outside of New York.

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