

New Jersey Court Extends “Marital Status” Discrimination Protection to Divorcing Workers

Client Advisories

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A New Jersey appeals court has recently held that the prohibition in the New Jersey Law Against Discrimination (NJLAD) against discrimination based on “marital status” is broad enough to also protect persons from discrimination because they are in the process of being divorced. Until this ruling, it had been unclear if the “marital status” prohibition in the NJLAD also covered divorced persons and/or those going through a divorce. In addition to the Court answering this question in the affirmative, the case also highlights the risks of employing spouses in the workplace and especially in a potential supervisor/supervisee relationship.

In this [case](#), the plaintiff, Robert Smith, had been the director of operations at the Millville Rescue Squad (MRS). His wife also worked at MRS as a supervisor. In 2005, the plaintiff/director of operations (i.e., the “husband”) started an affair with a subordinate. Several months later, his wife discovered the affair and advised the Executive Director, who then met with Smith. According to the husband, the Executive Director told him that “the one thing he can’t do is he can’t promise this won’t affect [his] job.” After the husband moved out of the marital home, the MRS Executive Director told him that he would be terminated because he and his wife were going to go through an “ugly divorce.” The MRS Board of Directors ultimately agreed to terminate the husband’s employment.

The husband filed a complaint which included a claim under the NJLAD for discrimination based on marital status. The trial court dismissed the claim but on appeal, the New Jersey Appellate Division reversed. The Appellate Division noted that the NJLAD does not define “marital status” but that, given the liberal remedial purpose of the law; it encompassed the state of “being divorced.” The Court reasoned that divorce unquestionably affects marital status. It also noted statistics about the high rate of divorce in the United States and reasoned that particularly given such statistics, “it would significantly undermine the marital status protection if an employer could freely discriminate against persons who choose to divorce.” The Court further held that “marital status” also includes stages preliminary to marriage, such as engagement to be married, and stages preliminary to marital dissolution, such as separation and involvement in divorce proceedings.

MRS did argue that the termination was not because of an imminent divorce, but rather because of the negative impact the divorce was expected to have on the workplace and the couple's performance, given that both spouses worked together. The Appellate Division rejected this notion because it was based on stereotypes about divorcing persons, namely, that they are automatically antagonistic with each other and are unable to perform their jobs. The Court also reasoned that the basis for the termination was the prospect of divorce and its presumed effects, and not the spouses' common employer.

Given this recent decision, the scope of the marital status prohibition under the NJLAD has now been clarified and employers must guard against any type of differential treatment against employees who are separated, divorced, or who are in the process of obtaining a divorce. The decision also serves as a caution to employers who employ spouses in the workplace and especially spouses that work together. Even if there is some evidence that a separation or divorce has impacted the working relationship, an employer may have a difficult time justifying taking action against one of the employees-such as a transfer or reassignment of job duties-based on the legal protections now provided to such divorced or separated employees. Employers also should think carefully before employing spouses in any type of supervisory relationship over the other.

If you have any questions about this advisory or other labor and employment matter, please contact any member of the **Labor and Employment Department** of Archer in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350.

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