



New Jersey Supreme Court Broadly Defines “Marital Status” Discrimination

Insights

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The New Jersey Supreme Court recently interpreted the state’s antidiscrimination law in an expansive manner, concluding that a broad spectrum of individuals can file suit and claim that their employers unfairly discriminated against them on the basis of their marital status. Not only will plaintiffs who believe they were targeted for mistreatment on the basis of their current marriage be able to find refuge under the law, but also will those engaged, separated, divorced, widowed, or even those who have never been married.

This decision will open the doors to additional lawsuits filed by disgruntled employees and former employees. New Jersey employers should take note of the decision in order to avoid ending up in court (*Smith v. Millville Rescue Squad*).

Concerns About An “Ugly Divorce” Lead To Lawsuit

Robert Smith was Director of Operations for the Millville Rescue Squad, and his direct supervisor was John Redden, the Squad’s CEO. Smith’s wife was also employed by the Squad, as were other of his family members.

In June 2005, Smith informed Redden that he was having an extramarital with a Squad volunteer. Redden told Smith he could not promise that the affair would not affect the status of Smith’s job. Shortly afterward, the volunteer left the Squad, but Smith continued his affair with her.

The affair eventually led to Smith’s separation from his wife in January 2006. Smith told Redden that his marriage had “collapsed,” and Redden asked Smith to keep him apprised of “any developments regarding his marital status.”

A month later, Redden met with Smith again and offered him a choice: either resign from the Squad or face involuntary termination. Redden said he believed that Smith would have an “ugly divorce,” and that Smith “had eight months to make things right” with his wife.” Smith initially said he would resign but then thought better of it. He was fired the next day.

Smith and his wife filed for divorce in March 2006, which was finalized in December. Contrary to Redden’s concerns, the divorce turned out to be “amicable” rather than “ugly,” and Smith and his ex-wife continued to have a good relationship.

Smith sued the Squad and Redden in 2008, alleging wrongful discrimination on the basis of marital status under the New Jersey Law Against Discrimination (LAD). The trial court dismissed Smith's claim before it could reach the jury, and his appeal ultimately found its way to the New Jersey Supreme Court.

Court Tells Employers: "No Stereotypes"

The New Jersey Supreme Court issued its opinion in June 2016, eight years after the lawsuit was first filed. The question facing the Supreme Court was whether "marital status" meant "more than the state of being single or married." The court held that it did, concluding that a "broader interpretation" was consistent with the LAD's "goal of eradication of 'the cancer of discrimination' in the workplace."

Marital status, the court reasoned, "should be interpreted to include those who are single or married and those who are in transition from one state to another," since "a person considering marriage or divorce or confronting the death of a spouse should not fear that a marriage ceremony, a divorce decree, or a funeral would trigger a loss of employment or a promised promotion."

Although the term "marital status" is not defined by the statute, the Supreme Court defined the term broadly to include "a never-married employee, an engaged employee, a separated employee, an employee involved in divorce litigation, or a recently widowed employee."

The court noted that New Jersey employers remain free to discipline or discharge employees whose personal lives cause actual disruption in the workplace, but may not act on the basis of "commonplace stereotypes" – for example, that a single employee is not committed to his career, that an engaged employee will be distracted by wedding preparations, or that a divorcing employee will be a source of trouble, even where the employee's estranged spouse is employed in the same workplace.

Employers also remain free to shield themselves from the possibility of family drama by adopting anti-nepotism policies, the court said, as long as they do not use the policy to discriminate in violation of the LAD. One way for this to happen, for example, would be to target "married relatives as distinguished from other types of relatives."

In this case, Redden's remarks revealed his displeasure about Smith's "fractured marriage," and his "reliance on stereotypes about the manner in which divorcing employees conduct themselves in the workplace." The dismissal of Smith's claim was therefore reversed, and the case was cleared to head to trial.

The Bottom Line

The bottom line for New Jersey employers is quite simple: if a divorcing employee's performance is suffering or the employee becomes a disruptive force in the workplace, you may take appropriate disciplinary action, up to and including termination. On the other hand, you are not permitted to take

adverse action on the mere assumption that divorcing employees – or single, engaged, married, or widowed – cannot or will not conduct themselves appropriately.

If you have any questions about this decision or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our New Jersey office at 908.516.1050.

This Legal Alert provides an overview of a specific New Jersey court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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