

Insights, News & Events

## COURT CONFIRMS THAT “PERCEIVED ALCOHOLICS” CAN’T BRING WORKPLACE CLAIMS IN NYC

Insights  
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In a solid win for New York City employers, the New York Court of Appeals held that a worker cannot bring a disability discrimination claim under New York City law based solely on a perception of untreated alcoholism. Through its holding, the state’s highest court foreclosed the courtroom doors to a class of employees and applicants who would otherwise have claims under city law, although the ruling may spur the City Council into revising the law in employees’ favor (*Makinen v. City of New York*).

### POLICE OFFICERS BRING SUIT AFTER ALCOHOL DIAGNOSIS

As we discussed in a [previous](#) article, the question arose in a case where two New York Police Department (NYPD) officers brought suit alleging that they were discriminated against based on the mistaken perception that they were alcoholics. The officers were each referred to the NYPD’s internal counseling service, received an alcohol-related diagnosis, and were directed to undergo treatment – though neither was diagnosed as suffering from alcoholism. They brought claims under the NYC Human Rights Law (NYCHRL), the New York State Human Rights Law (NYSHRL), and the federal Americans with Disabilities Act (ADA).

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The employer argued the plaintiffs' claims were barred by the plain text of the NYCHRL because the plaintiffs were not, nor perceived to be, "recovered or recovering alcoholics" as required by the city code. The lower court disagreed, and even after a verdict in the plaintiffs' favor, the district court concluded that individuals regarded as untreated alcoholics may state a claim under the NYCHRL because analogous claims were viable under both the NYSHRL and ADA (which each treat alcoholism as an impairment on which a claim might be based).

## **FEDERAL APPEALS COURT KICKS CASE TO STATE HIGH COURT**

On appeal, the 2nd Circuit Court of Appeals noted that Section 8-107(1)(a) of the NYCHRL prohibits employment discrimination based on an "actual or perceived . . . disability." Further, while the statute defines "disability" as "any physical, medical, mental or psychological impairment, or a history or record of such impairment," in the case of alcoholism, Section 8-102(16)(c) narrows the definition so that disability "shall only apply to a person who (1) is recovering or has recovered and (2) currently is free of such abuse."

But the federal appeals court was not prepared to offer the definitive word on the matter. The appeals court judges noted that, in the absence of authority from New York courts, it could not predict with confidence how the New York Court of Appeals, New York State's highest court, would reconcile the exceedingly broad remedial purpose of the NYCHRL with the limiting language of Section 8-102(16)(c). Finding tension between the plain statutory language and the City Council's stated intention to afford plaintiffs no less protection under the NYCHRL than under similar state and federal statutes, the 2nd Circuit certified the following question to the New York Court of Appeals: "Do sections 8-102(16)(c) and 8-107(1)(a) of the New York City Administrative Code preclude a plaintiff from bringing a disability discrimination claim based solely on a perception of untreated alcoholism?"

## STATE'S HIGHEST COURT RESOLVES DEBATE IN EMPLOYERS' FAVOR

On October 17, the New York Court of Appeals answered the question in the negative, holding that the "plain language" of the New York City Administrative Code protects only those who (1) are recovering or have recovered from alcoholism, and, (2) are "currently free of such abuse."

The impact of the court's holding is potentially far-reaching, as it provides support for the argument that, in "rare cases," New York City law provides less comprehensive protection than its state and federal counterparts, despite the Administrative Code's "plain mandate to be read broadly." Though the Court of Appeals held the NYCHRL does not permit disability discrimination claims based on the mistaken perception of untreated alcoholism, the New York City Council can, of course, amend the statute to allow such protection.

Given the expansive protections the NYCHRL provides for employees, it is very likely that the City Council will seek to do so. Additionally, employers in New York must be mindful to comply with state and federal disability laws with respect to alcohol and drug addiction.

For more information about how this case could affect your workplace, please contact the author at [jhwilson@fisherphillips.com](mailto:jhwilson@fisherphillips.com) (212.899.9985), any attorney in our [New York City office](#), (212.899.9960), or your regular Fisher Phillips attorney.

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