

Insights, News & Events

STATE APPEALS COURT EXPANDS SCOPE OF NYC'S MARITAL STATUS DISCRIMINATION LAW

Insights
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The scope of New York City's marital status discrimination law was just expanded by a state appeals court, meaning that employers need to be even more wary when it comes to any workplace decisions taken on the basis of who someone is married to. On September 6, the Appellate Division for New York's First Department answered for the first time the following question under the New York City Human Rights Law (HRL): may an employer dismiss an employee simply because the employee's spouse, also a former employee, had taken a job with the employer's competitor?

By holding that the HRL's prohibition against discrimination based on "marital status" not only protects employees from discrimination based on whether the employee is married or not, but also extends to protect an employee from discharge based solely on the identity of the employee's spouse, the court rejected the employer's defense and created a new set of headaches for business owners, managers, HR professionals, and legal counsel.

FIRED FOR BEING MARRIED? COURT ANALYZES CLAIM

In *Morse v Fidessa Corp.*, a former Fidessa employee (Christopher Morse) brought a claim under the HRL alleging he was improperly discharged based on his marital status, or perceived status. While employed by the financial services firm, Morse married a coworker and continued to reside with her and their children after they subsequently divorced. After Morse's ex-wife left Fidessa to work for a competitor, Fidessa suspended and later fired Morse; he

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alleged that the company was not pleased that he would have such a close connection to a business rival.

Morse sued, alleging that he had been discharged based on his marital status in violation of the HRL. Fidessa moved to dismiss the complaint on the grounds that the identity of Fidessa's spouse was irrelevant to an analysis of a marital discrimination claim under the HRL. The trial court denied Fidessa's motion, and it appealed to the Appellate Division.

In affirming the trial court's decision, the First Department found that "marital status" under the HRL encompassed more than whether an individual was married. It ruled that interpreting "marital status" broadly to include the status of two people *in relation to one another* would maximize deterrence of discrimination, consistent with the extremely broad legislative intent of the HRL. Looking only at whether the employee was married, the court reasoned, would allow other forms of discrimination based on marital status to escape the protection of the HRL.

"If marital status ever was a legitimate proxy for a rule for protecting company secrets," the court concluded, "it is not an acceptable proxy now given today's social reality, as reflected in a variety of intimate relationships, including those of unmarried couples." In other words, the dismissal of an employee based on a "disqualifying relationship" must rest upon factors other than the employee's marital status.

WHAT DOES THIS MEAN FOR NYC EMPLOYERS?

In arguing against dismissal of his complaint, Morse pointed out that Fidessa had not dismissed another unmarried employee whose domestic partner had likewise gone to work for a competitor. Moreover, Morse argued that his former wife's subsequent employment was improperly considered a "disqualifying factor" justifying his termination.

The court's emphasis on this latter point should raise a flag for NYC employers who maintain anti-nepotism policies or practices including spouses and are faced with managing sensitive employee departures. While an employee's marital relationship with an employee of a competitor might reasonably be considered as bearing on the security of confidential company information, in the First Department

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such fact may not, standing alone, justify an employee's dismissal.

To the extent you have such a policy or practice, you should check with your counsel before taking any adverse employment actions. For more information, contact your Fisher Phillips attorney or any attorney in our [New York City office](#).

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