

One Minute Memo[®]



New York Appellate Court Articulates New Evidentiary Standard For Summary Judgment In Discrimination Cases Under NY City Human Rights Law

On December 20, 2011, the New York Supreme Court, Appellate Division - First Department, issued its decision in *Bennett v. Health Management Systems, Inc.*, in which it affirmed the grant of summary judgment dismissing the plaintiff's age and race discrimination claims under the New York City Human Rights Law ("City HRL"). In doing so, the First Department took the opportunity to address the evidentiary standard required at the summary judgment stage in a discrimination case under the City HRL, keeping in mind that statute's "uniquely broad and remedial purposes."

In brief, *Bennett* articulates the following summary judgment framework:

1. Where the defendant moves for summary judgment by putting forth "evidence of one or more non-discriminatory motivations for its actions," a court should "generally avoid" the first part of the *McDonnell Douglas* inquiry, which asks whether a plaintiff has established a *prima facie* case of discrimination. Thus, in most cases, the court should first examine whether the defendant has provided a legitimate, non-discriminatory reason for the challenged employment decision.
2. To meet its burden at the summary judgment stage, the defendant must show that "no reasonable jury could find defendant liable" under any of the evidentiary routes: the *McDonnell Douglas* test, as one of a number of mixed motives, by direct evidence, or some combination thereof.
3. If the defendant meets its burden, a plaintiff will withstand summary judgment "in almost every case" by showing "that at least one of the reasons proffered by defendant is false, misleading, or incomplete." *Bennett* cautions employers to avoid "throwing numerous non-discriminatory justifications against a wall," because a plaintiff who impeaches just one of those justifications can defeat summary judgment.

Bennett underscores the need for employers to document adverse employment actions and provide clear, well-supported and truthful reasons for those actions. As an example, an employer should not label an employee's separation as a job elimination or layoff if, in fact, the employee was dismissed for unsatisfactory job performance. While there may be humane reasons for doing so (e.g., letting the employee tell prospective employers that he was laid off, as opposed to fired for poor job performance, in the hope of increasing his chances of getting a new job), it is now likely that no such good deed will go unpunished on summary judgment. Thus, now more than ever, employers operating within New York City and subject to the City HRL should consult with HR professionals and employment counsel to ensure that they properly review, justify and document the reasons for any adverse employment actions.

Arguably, *Bennett* applies to City HRL claims in state court only, but we expect that there will be litigation over whether this standard applies to City HRL claims brought in federal court. In the meantime, employers may start to see more plaintiffs

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filing discrimination cases under the City HRL in state court than in federal court, as those plaintiffs seek to take advantage of *Bennett's* summary judgment standard. Even then, the *Bennett* court's decision to affirm the grant of summary judgment shows that employers following best practices can still prevail on summary judgment under the City HRL.

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