

One Minute Memo[®]



New Jersey Court Expands Coverage: New Jersey Law Against Discrimination May Apply to Telecommuter Located in Massachusetts

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Seyfarth Synopsis: On April 2, 2018, the New Jersey Appellate Division reversed an order granting summary judgment to Defendant Legal Cost Control, Inc., finding that New Jersey’s Law Against Discrimination (LAD) may apply to an employee who lived outside New Jersey, worked outside New Jersey, and had not traveled to New Jersey in the last seven years.

Case Analysis

In [Trevejo v. Legal Cost Control](#), No. A-1377-16T4, 2018 WL 1569640 (App. Div. Apr. 2, 2018), the employee/plaintiff lived in Massachusetts and worked from her home for a Haddonfield, New Jersey based company. Although the plaintiff had visited New Jersey a few times on business, she had not been to New Jersey in the past seven years with the company. On this basis, the trial court granted the company’s motion for summary judgment, commenting that “[S]he’s not an inhabitant...Not even close...,” and thus declining to find that the LAD applied to the plaintiff.

The Appellate Division disagreed, finding that the LAD’s text (as opposed to legislative history) indicates that it applies to “persons,” not “inhabitants” of New Jersey, and that the LAD’s “predominant goal ... ‘is nothing less than the eradication of the cancer of discrimination in the workplace.’” The court thus refocused the inquiry on the company’s alleged conduct, noting that in addition to protecting “aggrieved employees,” the LAD furthers the “public’s strong interest in a discrimination-free workplace.” The court also noted that the plaintiff’s telecommuting arrangement warranted further discovery on questions such as: where plaintiff’s co-employees worked, whether other employees worked from home, the nature of the software used by the plaintiff and other employees to conduct business, the location of the company’s servers, the location of the company’s internet service provider, who made the decision to terminate plaintiff and the basis for the decision, as well as other questions targeted at finding whether plaintiff had a “virtual” presence in New Jersey (since she did not have an actual presence) that might support coverage by the LAD. With that, summary judgment was reversed and the case was sent back to the trial court for further discovery.

Potential Implications

As the workforce and work arrangements within our economy change, courts must necessarily analyze how preexisting laws apply in new factual contexts. New Jersey courts’ willingness to assert extraterritorial jurisdiction over out-of-state defendants and activities is not new. For instance, back in 2012, the Appellate Division held that a foreign company, with no official operations in New Jersey, was “doing business in New Jersey” because it employed a single telecommuting employee who

lived full-time in New Jersey. See *Telebright Corporation Inc. v. Director, New Jersey Division of Taxation*, 424 N.J. Super. 384 (App. Div. 2012).

Looking further back, in *Mehlman v. Mobil Oil Corp. et al.*, 153 N.J. 163 (1998), the New Jersey Supreme Court held that New Jersey's Conscientious Employee Protection Act (CEPA) protected a New Jersey Mobil Oil employee who was discharged in New Jersey after raising concerns about Mobil Oil's Japanese subsidiary while he was on a business trip in Japan. According to the Supreme Court, "Under CEPA, the wrongful conduct is the employer's retaliatory action, and we decline to impose artificial geographical limits on the harm or illegality that the objecting employee sought to avoid." *Id.* at 196.

The Appellate Division's decision *Trevejo* brings questions about the reach of New Jersey's discrimination and employment related laws full-circle. It appears now that such laws will be applied to (1) foreign companies with employees in New Jersey, (2) companies with operations in New Jersey, whose employees travel outside New Jersey, and (3) companies with operations in New Jersey and employees *who have little to no contact with the state*.

Thus, *Trevejo* represents yet another example, alongside *Telebright* and *Mehlman*, of New Jersey courts' expansive interpretations of the nuanced grey areas of New Jersey law. Employers, both those located in New Jersey and those who have even one employee in New Jersey, should be mindful of any contacts either they or their employees have with New Jersey, as such contacts (even in a case like *Trevejo*, which were seemingly nonexistent) could trigger protection under New Jersey law.

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