“Trenton Makes, The World Takes:” Implications of the Court’s Recent Application of NJLAD to Out-of-State Employees

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In June of this year, the Appellate Division of the New Jersey Superior Court extended the protections of the New Jersey Law Against Discrimination (NJLAD) to an employee who lived and worked in Illinois, for a subsidiary of a New Jersey company, and who applied for another position in New Jersey. In the recent case of *Calabotta v. Phibro Animal Health Corporation*, the court appears to have created a bright-line rule that NJLAD governs a job candidate's application to a position located in New Jersey, regardless of where the applicant resides. *Calabotta v. Phibro Animal Health Corp.,* ___ N.J. Super. ___, No. A-1576-17T3, (N.J. Super. Ct. App. Div. Jun. 27, 2019). However, the decision seems to require a fact-sensitive approach in other circumstances.

In *Calabotta*, the plaintiff alleged that the defendant failed to promote him, and later wrongfully terminated him, on the basis of his association with his terminally ill wife. The promotion Plaintiff sought was a position with the employer's parent company in New Jersey. In his complaint, the plaintiff alleged that the failure to promote violated the NJLAD's protection against associational discrimination, which does not have an Illinois counterpart. The Appellate Division analyzed the facts of the case under the choice-of-law factors set forth in the *Restatement (Second) of Conflict of Laws* (Am. Law Inst. 1971).

Ultimately, the court held that NJLAD applied to the Plaintiff's failure to promote claim. In so holding, the court emphasized that the position allegedly sought by the employee was located in New Jersey and opined, "If a job vacancy is in New Jersey, it would be unwieldy for an employer to have each applicant's quest for the position individually governed by the law of the state or country in which he presently happens to live." The court distinguished this holding from its decision in the case of *Buccilli v. Timby, Brown & Timby,* where an employee who lived in New Jersey and worked in Pennsylvania attempted to claim other protections of NJLAD, solely on the basis of her residence in New Jersey. *Buccilli v. Timby, Brown & Timby,* 283 N.J. Super. 6 (App. Div. 1995).

Notwithstanding its decision concerning the failure to promote claim, the Appellate Division remanded the wrongful termination claim to the trial court. The court was not prepared to create a bright-line rule for termination claims under the NJLAD, as it did for failure to promote claims. Instead, it remanded the case for further development of critical facts, including "the locations of the persons within the company who took part in the decision to terminate plaintiff; the sole or dominant place, if any, that the decision was made; and the locations of Plaintiff's conduct that precipitated his discharge."

Many New Jersey-based companies employ workers all over the country, so it is critical to understand where the limitations lie with respect to NJLAD's geographical reach. As the law stands following *Calabotta*, employers located in New Jersey must comply with NJLAD as it relates to applications for New Jersey positions. However, the law is more nuanced in the absence of such a connection.

Take away

New Jersey-based employers making employment decisions that may implicate protections of NJLAD and impact employees who live and work outside the state should confer with legal counsel to analyze what, if any, connections to New Jersey might affect the outcome of a choice-of-law analysis, and might require the employer to ensure compliance with New Jersey law, irrespective of the employee's location.