Which State Law Applies?: Multi-Jurisdictional Conduct and State Employment Law Statutes

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by Robert B. Fitzpatrick, Esq.[1]

Introduction

In the practice of employment law, it is increasingly rare that a set of events and actors are isolated to a single jurisdiction. Consider, for example, the following set: a matter "arising from the termination of plaintiff's employment where the decision to terminate was made in [New York], and the call to the employee was made from [New York], but the employee worked out of an office located in [Georgia], resided in [Georgia], and received the call communicating his termination while in [West Virginia]." *Hoffman v. Parade Publ'ns*, 2009 N.Y. App. LEXIS 3559 (N.Y. App. Div. May 7, 2009).

Which begs our general question: which state law applies when an allegedly discriminatory employment-related decision or activity occurs in one state, the effects of which are only felt in another state? Is it, under the above fact pattern, as the employee in *Hoffman* argued, the applicable state human rights statute(s) of New York, where the alleged discriminatory firing decision occurred? Or is it, as the *Hoffman* employer argued, *not* the law of New York, but rather the law of another state—*e.g.,* Georgia or West Virginia—where the impact of the alleged misconduct was felt?

Authority on point is split, with courts either applying or refusing to apply, for varying reasons, state human rights and other employment law statutes when an employment-related decision or activity occurring within a state has effects only outside the state.

There follows a collection of cases—organized by courts—confronting this "Which state law applies?" issue:

U.S. Court of Appeals

- *Schuler v. Pricewaterhouse-Coopers* [PwC]*, LLP*, 514 F.3d 1365 (D.C. Cir. 2008).
    - Plaintiff brought an age discrimination, failure to promote claim against PwC, which is headquartered in New York City.

[1] This article was prepared with assistance by Donald R. McIntosh, an associate with Robert B. Fitzpatrick, PLLC. Mr. McIntosh is a May 2008 graduate of Georgetown University Law Center and a member of the Virginia State Bar.

- Plaintiff, who was based in PwC's D.C. office, alleged that PwC maintained a discriminatory partnership policy, originating from its NYC office, under which the company refused to promote older qualified employees.

- The Court held that nothing in the text of the New York Human Rights Law (NYHRL) and no New York authority requires the impact of a discriminatory act to be felt in New York for the NYHRL to apply. Thus, the plaintiff's case could proceed although the plaintiff worked in the Washington, D.C. branch office.

- In so holding, the court distinguished and declined to adopt a string of New York federal district court cases construing the NYSHRL to include an "in-state impact requirement." *See, e.g.*:

  - *Pearce v. Manhattan Ensemble Theater, Inc.*, 528 F. Supp. 2d 175 (S.D.N.Y. 2007) (recognizing a split of authority regarding whether the NYSHRL, like the New York City Human Rights Law [(NYCHRL)], includes an in-state "impact requirement" and holding that it does);

  - *Lucas v. Pathfinder's Personnel, Inc.*, 2002 U.S. Dist. LEXIS 8529, at *3 (S.D.N.Y. May 13, 2002) ("[T]he fact that the decision to terminate Plaintiff was made in New York State is not sufficient to establish a violation of the [NYSHRL].");

  - *Wahlstrom v. Metro-North Commuter R.R. Co.*, 89 F. Supp. 2d 506, 527-28 (S.D.N.Y. 1999) (finding that "the NYCHRL only applies where the actual impact of the discriminatory conduct or decision is felt within the five boroughs, even if a discriminatory decision was made by an employer's New York City office);

  - *Salvatore v. KLM Royal Dutch Airlines*, 1999 U.S. Dist. LEXIS 15551, at *16 (S.D.N.Y. Sept. 30, 1999) ("The fact that certain acts leading to discrimination may occur in New York City will not necessarily give rise to a claim under the City HRL. To determine the location of the discrimination, courts have looked to the location of the impact of the offensive conduct.");

  - *Duffy v. Drake Beam Morin, Harcourt Gen., Inc.*, 1998 U.S. Dist. LEXIS 7215,at *32-34 (S.D.N.Y. May 19, 1998) ("[T]he [NYSHRL] affords no remedy to a non-New York resident who suffers discrimination outside New York State.").

U.S. District Courts

- *Rohn Padmore, Inc. v. LC Play Inc.*, 679 F. Supp. 2d 454 (S.D.N.Y. 2010).

    - In a case where the New York City-based company-defendant terminated from its New York City headquarters, via email, the Los Angeles-based employee-plaintiff; plaintiff asserted that he was unlawfully terminated under the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL) due to the perception that he was homosexual.

    - The court found subject matter jurisdiction proper under both statutes, and adopted *Hoffman* (*infra*) and *Schuler* (*supra*) for the proposition that:

        > "[L]ogic and common sense alone [] dictate that if an employer located in New York made discriminatory hiring or firing decisions, those decision would be properly viewed as discriminatory acts occurring with the boundaries of New York. . . . [Further], it would be contrary to the purpose of both [statutes] to leave it to the courts of other jurisdictions to appropriately respond to acts of discrimination that occurred here."

- *Turnley v. Banc of Am. Inv. Servs., Inc.*, 576 F. Supp. 2d 204 (D. Mass. Sept. 17, 2008).

    - The plaintiffs alleged under the Massachusetts human rights statute, that the company discriminatorily arranged business partnerships, opportunities, and resources on the basis of race.

    - While the company was headquartered in North Carolina, the alleged discriminatory actions originated from the company's office in Massachusetts; the employees were African Americans based in the company's Georgia office.

    - The court held that the action was properly brought in Massachusetts, finding that "courts have applied [the Massachusetts human rights statute] in situations where the employment decisions at issue were made in Massachusetts, though their effects were felt in another state."

    - The court favorably cited *Cormier v. Pezrow New England, Inc.*, 771 N.E.2d 158 (Mass. 2002), in which that court found "no question of jurisdiction" where employee, a Massachusetts citizen, received notice of his termination in the Connecticut office of his employer, a Massachusetts company .

- *Judkins v. Saint Joseph's Coll. of Maine*, 483 F. Supp. 2d 60 (D. Me. 2007).

    - The defendant-college made allegedly discriminatory decisions at its main campus in Maine, which affected the plaintiff-professor at the college's satellite campus in the Cayman Islands.

- The court held: (1) as to the plaintiff's claims under Title VII and the ADEA, any discrimination against plaintiff, a non-resident of Maine, occurred in the Cayman Islands, not Maine, and that (2) as to the plaintiff's claims under the Maine Human Rights Act, that Act's lack of clear and explicit language providing for extraterritorial application created for the plaintiff an insurmountable presumption against extraterritorial application, a presumption that "guards against possible conflicts with other states' laws and violations of the Commerce Clause."

- *Arnold v. Cargill*, 2002 U.S. Dist. LEXIS 13045 (D. Minn. July 15, 2002).

  - The plaintiffs-employees alleged a claim of disparate treatment under the Minnesota Human Rights Act, that the defendant-company's policies emanating from its headquarters in Minnesota unlawfully affected the plaintiffs, who did not work or reside in Minnesota.

  - The court held that, absent a "specific provision extending the application of the statute to persons outside the borders of the state . . . [t]he fact that [defendant's] headquarters are located in and the contested company-wide policies emanated from Minnesota is insufficient to justify extraterritorial application."

- *Hanan v. Corso*, 1999 U.S. Dist. LEXIS 23160 (D.D.C. May 19, 1999) (Facciola, M.J.).

  - Under the DCHRA, the plaintiff, based in the defendant's D.C. office, asserted age discrimination claims—failure to hire and unlawful dismissal—against employer.

  - The plaintiff alleged that the defendant discriminatorily failed to hire him for a position in Virginia, to which employer argued that the DCHRA could have no application as the prospective position was in Virginia and as the alleged discriminatory termination decision was made by persons employed by employer in Virginia.

  - The court held that the DCHRA applied to the claims, stating:

    > If, as was unquestionably true of [the plaintiff], the headquarters of the corporation they work for is in Virginia, but their duties take them to the District of Columbia on a daily basis to perform their responsibilities, and they spend a substantial part of their day in the District, surely the District's employer discrimination laws reach a claim that they were subject to discrimination when they were terminated from the jobs they performed.

  - The *Hanan* court cited with approval *Green v. Kinney Shoe Corp.*, 704 F. Supp. 259 (D.D.C. 1988) ("The broad language of the [DCHRA] leads the Court to understand that the [DCHRA] was intended to cover all discrimination concerning

jobs located in the District of Columbia, even if the application and decision to discriminate were made outside the District."), and *Holt Life Care Servs. Corp.*, 121 Daily Washington L. Rptr. 1497, 1513-1514 (Sup. Ct. July 23, 1993) (DCHRA applies where a black employee who works in the District of Columbia was told that she would not be promoted to a position in Maryland because of her race).

State Courts

- *Hoffman v. Parade Publ'ns*, N.Y. App. LEXIS 3559 (N.Y. App. Div. May 7, 2009).

    - In an action brought under the NYSHRL and NYCHRL, the plaintiff asserted claims of age discrimination, where the employer's decision to terminate the plaintiff's employment was made in New York, and the call to the employee was made from New York, but the employee worked out of an office located in Georgia, resided in Georgia, and received the call communicating his termination while in West Virginia.

    - The Court held that "nothing in the cited federal cases [cited *supra*, in *Schuler*] [] convince us that an out-of-jurisdiction plaintiff is precluded from interposing claims under the NYSHRL and NYCHRL when the New York employer is alleged to have made its employment decisions in a discriminatory manner [in New York]."

- *Monteilh v. AFSCME, AFL-CIO*, 982 A.2d 301 (D.C. 2009).

    - The plaintiff alleged that the defendant made discriminatory decisions in its D.C. headquarters, which affected the plaintiff in California or Georgia.

    - The court preliminary found that because the D.C. Human Rights Act's (DCHRA) prohibition against discrimination is to be construed broadly, the court held that "recognizing jurisdiction under the DCHRA where actual discriminatory (and/or retaliatory) decisions by an employer are alleged to have taken place in the District is most faithful to the statutory language and purpose."

    - The court did not, however, touch the question of whether its interpretation of the DCHRA amounted to an extraterritorial application of the statute.

    - The court's relied heavily upon *Matthews v. Automated Bus. Sys. & Servs., Inc.*, 558 A.2d 1175, 1180 (D.C. 1989) (finding that "[i]f the events alleged in [plaintiff's] complaint occurred in the District of Columbia, they are subject to scrutiny under [the DCHRA], regardless of whether [plaintiff's] 'actual place of employment' was in Maryland, the District, or both . . . [t]hus the critical factual issue bearing on jurisdiction is whether these events took place in the District"). The *Matthews* court also did not consider whether its holding amounted to an extraterritorial application of the DCHRA. *Id.* at 1180 n.8 ("We assume, without

deciding, that the [DCHRA] does not apply to acts occurring outside the District. Whether it has extraterritorial application is ultimately a question of legislative intent, which is not before us in this appeal.").

- *Himes Assoc., Ltd. v. Anderson*, 943 A.2d 30 (Md. Ct. Spec. App. 2008), *cert. denied*, 950 A.2d 829 (Md. 2008).

    - Himes, a Virginia corporation with its principal place of business in Fairfax, Virginia, was deemed an "employer" under the Maryland Wage Payment and Collection Act (MWPCL), even though its former employee (Anderson) was assigned to work from its Fairfax, Virginia office, and even though the work that he performed in Maryland was extremely limited in scope (e.g., participating in an initial presentation to manage a multi-million dollar construction project for a Maryland corporation in Virginia, and attending bi-monthly meetings in Baltimore concerning the Virginia construction project).

    - In concluding that Himes was an "employer," the Maryland Court of Appeals relied upon the plain language of section 3-501 of the MWPCL, which defines "employer" to "include any person who *employs* an individual in the State," and reasoned that because section 3-101 defines the term "employs" to include: "(i) allowing an individual to work; and (ii) *instructing an individual to be present at a work site,"* that the situation in which a company outside of Maryland directs its employee to go to a work site in Maryland is clearly encompassed therein.

    - The Court rejected the argument that because Himes' former employee was not "regularly employed" in Maryland (which is the standard the Court employs when construing the meaning of the term "employer" under the Maryland's Workers' Compensation Act (Md. Code Ann., Lab & Empl. §§ 9-101 *et seq.)),* it should not be deemed an employer under the MWPCL.

    - The Court explained that the "regularly employed" test employed a more rigid standard than what the Maryland General Assembly intended the term "employer" to mean under the MWPCL, stating as follows: "If the legislature had intended the MWPCL to apply only to employers of those individuals who are 'regularly employed' in Maryland, it could have said so."

    - *Cf. Martinez v. Holloway*, No. Civ. A. DKC-03-2118 (D. Md. 2005) (holding that where an employer hired employees in Maryland, but the employees' work was performed in Pennsylvania, employer was not liable under the MWPCL (relying upon *Hodgson v. Flippo Constr. Co., Inc.*, 883 A.2d 211 (Md. Ct. Spec. App. 2005), for its analysis of a similar issue under the Maryland Workers' Compensation Act)).

- *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582 (Iowa 2002).
    - The plaintiff-employee brought a collection action for unpaid wages under the Iowa Wage Payment Collection Law (IWPCL),
    - The plaintiff resided in Missouri but transacted business and performed services in Iowa on behalf of defendant-employer.
    - The employer argued that the IWPCL did not apply, as the employer was not located in Iowa and the employee did not reside in nor was he paid in Iowa.
    - The court held that application of the IWPCL was proper, as the statute's use of the phrase "employed in this state" governed the plaintiff's transaction of "substantial business" and routine performance of services on behalf of the employer "within Iowa's borders."
- *Union Underwear Co., Inc. v. Barnhart*, 50 S.W.3d 188 (Ky. 2001).
    - The plaintiff-employee, employed in either Alabama or South Carolina at all relevant times, brought a claim of unlawful dismissal on the basis of his age against Fruit of the Loom under the Kentucky Civil Rights Act (KCRA). Fruit of the Loom was headquartered in Kentucky and incorporated in New York.
    - The court held that "upon the facts of this case, allowing [the plaintiff] to obtain relief under the KCRA is an extraterritorial application of the Act," and the state did not make the "policy decision" to provide for extraterritorial application of the KCRA.