

New York Court of Appeals Limits Ability of Nonresident Plaintiffs Who Do Not Work in New York to Assert Claims Under City and State Human Rights Laws

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On July 1, the New York Court of Appeals, in a 4-3 decision in *Hoffman v. Parade Publications*,¹ clarified the extraterritorial reach of the New York City and State Human Rights Laws. The court held that nonresident plaintiffs who do not work in New York City or State and who cannot establish that alleged discriminatory conduct had an “impact” within either location may not invoke the protections of those laws. In doing so, the court reversed the appellate division’s opinion “that an ‘out-of-jurisdiction’ employee’s allegation that a discriminatory decision to terminate was made in New York City, if established, is sufficient to demonstrate that New York has subject matter jurisdiction.”

Plaintiff Howard Hoffman, a Georgia resident, was the managing director of Parade Publications’ newspaper relations group. In that role, Hoffman developed and oversaw Parade’s inclusion in newspapers in 10 states throughout the south and southwest United States from his Atlanta, Georgia office. He did not service any accounts in New York. In October 2007, the president and publisher of Parade called Hoffman from Parade’s New York City headquarters to inform Hoffman that the Atlanta office would be closed and Hoffman’s employment would be terminated—decisions Hoffman claimed were based on his age. Thereafter, Hoffman filed age discrimination claims under the New York City and New York State Human Rights Laws against Parade Publications, Condé Nast Publications, and Advance Publications, Inc.

The defendants moved to dismiss the complaint on numerous grounds, including lack of subject matter jurisdiction, based on the fact that Hoffman lived and worked in Georgia and had little, if any, connection to either New York City or State. In response, Hoffman argued that he attended quarterly meetings in New York, the newspaper relations group was managed by individuals in New York, and the decision to terminate his employment was made in and executed from New York City. Hoffman, therefore, argued that he was protected by the New York City and State Human Rights Law. The New York State Supreme Court ruled in the defendants’ favor, finding “that neither the City nor State Human Rights Laws applied to a plaintiff who does not reside in New York because the ‘impact’ of defendants’ alleged discriminatory conduct was not felt within those boundaries.” On appeal, the appellate division reversed and reinstated the complaint, finding that Hoffman’s allegation that the termination decision was made in New York City was sufficient grounds to find that subject matter jurisdiction was proper in New York under both laws.

¹ *Hoffman v. Parade Publications*, No. 132, slip op, 05706 (N.Y. July 1, 2010),

After the question was certified to the court of appeals, the court examined the policies underpinning both Human Rights Laws and held that the New York State Supreme Court’s interpretation was correct—a nonresident plaintiff, such as Hoffman, must plead and establish that the alleged discriminatory decision had an impact within the city or state in order to invoke the protections of either law. Addressing Hoffman’s City Human Rights Law claim first, the court resolved a disagreement among state and federal courts regarding the territorial reach of the Human Rights Law. While some courts had previously held that a nonresident plaintiff could state a claim under the City Human Rights Law by simply alleging that the discriminatory decision occurred in New York City, the court found that simply focusing on where the discriminatory decision was made, as opposed to where the impact of the decision was felt, would improperly expand the reach of the City Human Rights Law to include any termination decision made by an employer in New York City regardless of the employee’s location.

According to the Court of Appeals, the appellate division’s decision “would lead to inconsistent and arbitrary results, and expands [the City Human Rights Law] protections to non-residents who have, at most[,] tangential contacts within the City.” The Court concluded that requiring the discriminatory decision to have an “impact” within the City would ensure predictable results and limit the City Human Rights Law’s protections to those who were meant to be protected—people who live or work within New York City. As Hoffman did not fall under either category, the court dismissed his City Human Rights Law.

Using a similar rationale, the court also dismissed Hoffman’s State Human Rights Law claim, holding that a “non-resident must plead and prove that the alleged discriminatory conduct had an impact in New York” state. According to the court, the State Human Rights Law was enacted to protect the “inhabitants” of New York, as well as those persons “within” the state—i.e., those persons working in New York.

The court also noted that the State Human Rights Law not only protects those New York residents, domestic corporations, and corporations doing business in New York from discriminatory acts committed outside the state, but also prohibits New York residents and domestic corporations from discriminating against New York residents outside of New York. Therefore, “while New York residents may bring a claim against New York residents and corporations who commit ‘unlawful discriminatory practices’ outside the state,” the court held that the Human Rights Law was not intended to protect an individual, such as Hoffman, who neither resided nor worked in New York, and who could not demonstrate that the alleged discriminatory act had any impact within the state.

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