Favorable Court Ruling Blocks Out-of-State Remote Workers from Bringing New York State and City Discrimination Claims

Insights
5.05.22

A New York federal court recently held that an employee working remotely from New Jersey solely due to the COVID-19 pandemic cannot assert claims under the New York State and New York City anti-discrimination laws. In arriving at its April 20 decision in *Shiber v. Centerview Partners LLC*, the court applied longstanding precedent holding that alleged discriminatory conduct must have an impact in New York City and New York State for the city and state's anti-discrimination laws to apply, precedent which the court ruled was not altered by the pandemic. The helpful decision sheds light on the question of which jurisdictions' employment laws apply to employees forced to work from home during the pandemic. While this case does not answer every question regarding remote work, it provides important guidance for New York employers with remote workers.

Recapping the State and City Laws

The New York City Human Rights Law (NYCHRL) and New York State Human Rights Law (NYSHRL) are, respectively, New York City and New York State's anti-discrimination laws. The laws provide some of the strongest anti-harassment and anti-discrimination laws in the country, providing employees with protections that go well beyond federal and other jurisdiction's requirements.

Court Knocks Out NYCHRL and NYSHRL Claims Filed by NJ Remote Worker

In this case, Kathryn Shiber was a New Jersey resident who was hired by Centerview Partners, LLC, an investment bank and advisory firm with offices in New York City. Centerview offered Shiber a position in September 2019 for the company's three-year analyst program, starting in June 2020. Though it was originally anticipated she would work out of the firm's NYC office, she began her employment remotely due to the intervening COVID-19 pandemic. Shiber worked out of her New Jersey home with the understanding that she would be expected to work from the NYC office upon its reopening.

Centerview terminated Shiber's employment before the NYC office reopened, however. For the entirety of her employment, she had worked exclusively from her home in New Jersey, never setting foot in the NYC office. Following her termination, Shiber brought an action against Centerview, alleging disability discrimination under the NYCHRL and NYSHRL, among other claims.

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Centerview made a motion to dismiss the NYCHRL and NYSHRL claims on the grounds that Shiber was a non-resident of New York who only worked in New Jersey during her employment. The company argued that the NYCHRL and NYSHRL did not apply to Shiber.

The court agreed with Centerview. In reaching its decision, District Court Judge Edgardo Ramos applied the discriminatory "impact" test to Shiber's New York discrimination claims. Under this long-standing precedent, a plaintiff must allege that the impact of the discriminatory conduct was felt by the plaintiff in New York State and New York City. In this case, Shiber could not do so she only worked from her home in New Jersey.

The court rejected Shiber's argument that the laws should apply to her because she expected to work at Centerview's New York City offices at some point in the future. Moreover, the court rebuffed her contention that, because of the pandemic's impact on remote work arrangements, the long-standing discriminatory impact test should no longer be applied since it was based on a traditional work-from-the-office assumption.

What Does This Decision Mean for Employers?

This decision brings welcome relief for employers who have been concerned that expansive discrimination laws may apply to remote workers who never worked in New York. The baseline test continues to be whether the adverse action is a discriminatory "impact" felt in New York, and employers will welcome the news that the answer is "no" for employees who never worked in New York.

It is important to note that the outcome could be different for an employee who worked in New York State or City *before* working remotely due to COVID-19. In that situation, depending on the circumstances, an employee may be able to allege a discriminatory impact felt in New York.

You should continue to ascertain whether New York State or City discrimination laws apply to your remote workforce by keeping in mind the geographic "impact." In other words, where do the employees reside? Where are they actually working?

If, due to the nature of remote work, it seems unlikely that the New York laws apply, that begs the question of what laws *do* cover that employee. Your business may now be subject to employment laws of the states and localities of your remote workers' residences. With this may come different obligations. You should consider whether your employee handbook and other employment procedures and practices need to be updated to reflect the jurisdictions in which you have remote employees.

We will continue to monitor developments impacting New York employers, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have any questions about this information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New York City office.

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