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Expanding DCHRA Beyond DC Employment

Law360, New York (November 05, 2009) -- A recent decision of the District of Columbia Court of Appeals (the highest court for the district) has expanded the jurisdictional coverage of the District of Columbia Human Rights Act ("DCHRA") beyond the district‟s borders.

That decision, Monteilh v. AFSCME, AFL-CIO, No. 06-CV-1155 (D.C. Sept. 17, 2009), found that the DCHRA would apply to a discrimination claim made by an employee because some of the decisions the employee complained of occurred in the district, even though the employee had never applied for a job in the district and had never performed any work whatsoever in the district.

Employers with a managerial office in the district with the authority to make, recommend or approve decisions affecting workers outside the district should take note of this remarkable expansion of the DCHRA.

Prior to Monteilh, the primary case regarding the scope of the DCHRA‟s geographic reach was Matthews v. Automated Bus. Sys. & Servs. Inc., 558 A.2d 1175 (D.C. 1989).

In Matthews, the District of Columbia Court of Appeals considered whether the DCHRA applied to an employee whose actual place of employment was in Maryland but who performed some of her work in the district.

Matthews alleged sex discrimination and asserted that some of the events constituting discrimination occurred within the district.

The court held that jurisdiction under the DCHRA was proper "whether [the employee‟s] „actual place of employment‟ was in Maryland, the district, or both." Id. at 1180. "[T]he critical issue bearing on jurisdiction," the court stated, was whether the alleged discriminatory acts had "occurred" in the district. Id.

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The court also noted that it was assuming, “without deciding, that the District of Columbia Human Rights Act does not apply to acts occurring outside the district.” Id. at 1180 n.8. That question of “extraterritorial application” was “ultimately a question of legislative intent” and not before the court at that time. Id.

In Monteilh, the allegations differed in key respects from the Matthews decision.

The plaintiff‟s employer, the American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), was headquartered in the District of Columbia. The plaintiff, however, had “never performed any work, nor applied for any position, in the District of Columbia.” Monteilh, Slip. Op. at 2.

The plaintiff, Mr. Monteilh, began working for AFSCME in 1976 in California and was later transferred to Georgia. He filed suit against AFSCME in 2005 in the district making two principal allegations:

1) that he was denied a promotion based upon his race and age when he was working in California; and

2) that he was retaliated against for filing a grievance with AFSCME regarding its failure to promote him.

Monteilh alleged that the retaliation against him included his transfer to Georgia, disciplinary actions taken against him, and additional race and age discrimination directed toward him. Slip Op. at 2-3.

AFSCME moved to dismiss Monteilh‟s complaint for lack of subject matter jurisdiction.

The trial court held an evidentiary hearing, in which AFSCME presented evidence that “most of the decisions Monteilh alleges as discriminatory were made by personnel outside the district, with personnel at the district merely ratifying the decisions.” Slip. Op. at 3.

The trial court found that the decision to transfer Monteilh to Georgia was made in the district and that final personnel decisions were at least approved or endorsed at AFSCME headquarters in the district. Slip. Op. at 4.

The trial court granted AFSCME‟s motion to dismiss, however, because AFSCME‟s decisions about Monteilh had no effect on the employee within the district and did not affect a job position or application for employment in the district, and, therefore, in the trial court‟s view, the DCHRA did not apply. Slip. Op. at 4.

The District of Columbia Court of Appeals reversed and remanded, explaining that the facts determined by the trial court during the evidentiary hearing may be sufficient to establish subject matter jurisdiction under the DCHRA.

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The court relied heavily on a statement from Matthews that “the critical factual issue bearing on jurisdiction is whether the[ ] events [alleged in the complaint] took place in the district.” Slip Op. at 6 (quoting Matthews, 558 A.2d at 1180).

Unlike Matthews, however, the discriminatory effects in Monteilh were not felt by the employee in the District of Columbia; the Court of Appeals therefore expanded the definition of “event” to include not only the discriminatory effects of a decision, but also the decision itself.

The court stated 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.” Slip Op. at 6.

The court reasoned that limiting jurisdiction to discrimination “whose effects an employee has experienced inside the district” would be inconsistent with the broad remedial purposes of the DCHRA and previous court statements that the DCHRA‟s provisions should be construed broadly. Slip Op. at 7.

The court clarified that having a company headquartered in the district would not suffice to establish subject matter jurisdiction under the DCHRA. Instead, “[e]ither the decision must be made, or its effects must be felt, or both must have occurred, in the District of Columbia.” Slip Op. at 7.

The court did not specifically elaborate whether the “decision” included recommendations or approvals of decisions initiated or made elsewhere, but it did mention the lower court‟s factual finding that AFSCME‟s “final personnel decisions are at least approved or endorsed at headquarters.” Slip Op. at 4.

The court remanded to the trial court to evaluate subject matter jurisdiction under that standard. Slip Op. at 8.

The court did not explain whether its interpretation amounted to an extraterritorial application of the DCHRA to regulate conduct outside of the district‟s borders, and it made no mention of the footnote in Matthews stating that the court assumed the DCHRA did not have extraterritorial reach.

Presumably the court interpreted its decision in Monteilh as consistent with that prior note, and viewed it as endorsing regulation of “events” — i.e., decision-making — occurring in the District of Columbia, although it could also be viewed as regulating conduct outside of the district.

Although there is a split of authority on whether a state human rights statute should apply when a decision within the state has effects only outside of the state, the District of Columbia appears to be in the minority on this issue.

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A number of states have refused to adopt the District of Columbia‟s rule based upon concerns about applying their rules beyond the borders of the state and the implications of attempting to do so under the Commerce Clause of the U.S. Constitution.

A federal district court in Maine, for example, found that Maine‟s human rights law would not apply to decisions made in the state with effects outside the state.

In Judkins v. Saint Joseph‟s College of Maine, 483 F. Supp. 2d 60 (D. Me. 2007), a former employee based in the Cayman Islands sued the college, based in Maine, for age and sex discrimination.

The employee‟s contract was negotiated with college officials located in Maine and the decision to terminate the employee was made in Maine. Id. at 63.

In determining whether the employee had made a timely charge to the EEOC, the court considered whether the Maine Human Rights Commission had subject matter jurisdiction over the claim.[1]

The court found that subject matter jurisdiction did not exist, relying on the presumption against extraterritorial application of statutes.

That broad presumption "guards against possible conflicts with other states‟ laws and violations of the Commerce Clause" that would result from one state‟s interference with the actions of other states. Id. at 65.

The court noted that the plaintiff‟s "only connections to the state" were that the college was "located in Maine and decisions were made in Maine regarding plaintiff‟s employment," but those connections were insufficient to overcome the presumption of extraterritoriality. Id.

Other courts have refused to extend the reach of their states‟ respective human rights statutes on the same bases elaborated in Judkins.

In Arnold v. Cargill, 2002 WL 1576141 (D. Minn. July 15, 2002), for example, the court considered a putative class action brought by out-of-state employees against an employer in Minnesota, claiming that company policies that emanated from Minnesota regarding compensation, promotions and termination were discriminatory under the Minnesota Human Rights Act.

The court found those facts insufficient to justify extraterritorial application "particularly where there is no evidence before the court that [the employer] could not otherwise be held accountable in the courts of other states where the named plaintiffs reside or work." Id. at *4.

Kentucky similarly rejected the extraterritorial application of its human rights statute in part because it "could result in competing jurisdictions and difficult choice of law

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questions, all of which would delay rather than expedite the disposition of" discrimination claims. Union Underwear Co. Inc. v. Barnhart, 50 S.W.3d 188, 193 (Ky. 2001).

Other courts have reached the same conclusion. See, e.g., Lucas v. Pathfinderr‟s Pers. Inc., 2002 WL 986641, *1 (S.D.N.Y. May 13, 2002) ("The allegation that the decision to terminate Plaintiff was made in New York City ... is insufficient to establish a violation ... where, as here, the impact of that decision occurred outside New York City."); Wahlstrom v. Metro-North Commuter R.R., 89 F. Supp. 2d 506, 527 (S.D.N.Y. 2000) (stating that courts applying New York City‟s human rights law held that it "only applies where the actual impact of the discriminatory conduct or decision is felt within the five boroughs, even if a discriminatory decision is made by an employer‟s New York City office.").

Other courts have taken the approach adopted by the Monteilh court.

For example, other New York courts have found that a discriminatory decision made in New York is sufficient to confer jurisdiction, regardless of whether the decision has an impact in New York, because "it would be contrary to the purpose" of the human rights statute "to leave it to the courts of other jurisdictions to appropriately respond to acts of discrimination that occur [in New York]." See, e.g., Hoffman v. Parade Publications, 878 N.Y.S.2d 320, 327 (N.Y. App. 2009) (listing cases).

In addition, a federal district court in Massachusetts rejected an extraterritorial challenge to state law claims by out-of-state employees because "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." Turnley v. Banc of America Investment Servs., 576 F. Supp. 2d 204, 219 (D. Mass. 2008) (citing Cormier v. Pezrow New Eng., 437 Mass. 302 (2002)).[2]

The impact of the Monteilh decision on employers could be much more significant than a similar decision in other jurisdictions because of several of the unique features of the DCHRA. D.C. Code § 2-1401 et seq.

In particular, the DCHRA‟s employment protections apply to a much broader set of protected characteristics — race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation or political affiliation (D.C. Code § 2-1402.11(a)) — than federal law and the human rights statutes of many states and cities, exposing many more personnel decisions to allegations that they were made on prohibited bases.

In addition, unlike Title VII, the DCHRA has no limit on damages, greatly expanding the scope of potential liability. Compare D.C. Code § 2-1403.16 with 42 U.S.C. § 1981a(b)(3).

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Finally, in contrast to Title VII, the DCHRA allows suits against individuals in some circumstances. Compare Lissau v. Southern Food Serv. Inc., 159 F.3d 177, 180-81 (4th Cir. 1998) with Purcell v. Thomas, 928 A.2d 699, 715-16 (D.C. 2007).

Because of these broad provisions of the DCHRA, the Monteilh case has potentially broad ramifications for employers with managerial offices in the district whose policy or personnel decisions affect employees who work outside the district.

Indeed, Monteilh can be read to extend not only to final decisions, but also to approvals and recommendations made within the district.

Prudent employers should, therefore, review their managerial structure to determine which employment decisions are recommended, made or approved within the district — even if those decisions have effects wholly outside the district — and review those decisions for compliance with the DCHRA.

--By Jason C. Schwartz (pictured) and Daniel J. Davis, Gibson Dunn & Crutcher LLP

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The opinions expressed are those of the authors and do not necessarily reflect the views of Portfolio Media, publisher of Law360.

[1] In cases of concurrent state and federal jurisdiction, the EEOC charge filing deadline is extended from 180 to 300 days. 42 U.S.C. § 2000e-5(e)(1).

[2] The Cormier case relied upon by the Turnley court, however, does not support extend as far as Turnley. In Cormier, the court was simply considering the proper county for venue for an employment case brought against a Massachusetts employer by a Massachusetts employee whose office was in Connecticut but who performed work in Massachusetts. 437 Mass. at 305. The Courmier court stated that there was “no doubt” about subject matter jurisdiction in such a case.

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