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New Jersey “Marital Status” Protection Applies to All Types of Marital Status, State Supreme Court Says

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The New Jersey Supreme Court has [unanimously ruled](#) that the New Jersey Law Against Discrimination includes protection for separated, divorcing and divorced employees.

The LAD prohibits discrimination based on, among other things, marital status. However, until now many had interpreted it as applying only to “single” or “married” status and not to the breakup of a marriage.

The state Supreme Court’s decision effectively extends the reach of the LAD to include those who are separated, in the process of divorce, or divorced, and made clear that employers are prohibited from assuming, based on “invidious stereotypes,” that an employee will be disruptive or ineffective simply because of marital status.

Plaintiff Robert Smith was director of operations of the Millville Rescue Squad, and his wife also worked for the Rescue Squad. Although he was

never formally disciplined, was promoted twice, and received annual raises, Mr. Smith had an affair with a Rescue Squad volunteer, which resulted in the breakup of his marriage. (In the past, his wife had also allegedly had an affair with a Rescue Squad mechanic, and at least two supervisors had had relationships with women who reported to them.)

While Mr. Smith and his wife were separated and preparing to divorce, and after determining that they were unlikely to reconcile, Mr. Smith’s supervisor allegedly told him that he could not promise that an “ugly divorce” would not affect Mr. Smith’s job. Mr. Smith was subsequently terminated for alleged poor performance and an “operational restructuring.”

Mr. Smith sued the Rescue Squad and his former supervisor individually for wrongful discharge under the LAD. The trial court granted defendants’ motion for involuntary dismissal of the LAD claims, finding that Mr. Smith was fired because his employer was concerned about the likelihood of an acrimonious divorce, which the court said did not give rise to a marital-status discrimination claim. The Appellate Division reversed, finding that “marital status” included being separated and involved in a divorce proceeding, and the Supreme Court agreed with the Appellate Division.

Supreme Court decision

Writing for the unanimous Supreme Court, Appellate Division Judge Mary Cuff (temporarily assigned) said that the LAD “protects all employees who have declared that they will marry, have separated from their spouse, have initiated divorce proceedings, or have obtained a divorce from discrimination in the workplace.” The Court held that the LAD “prohibits an employer from imposing conditions of employment that have no relationship to the task assigned to and expected of an employee” and “from resorting to stereotypes to

discipline, block for advancement, or terminate an employee due to a life decision, such as deciding to marry or divorce." The Court found that a reasonable jury could determine that "discriminatory animus" against divorcing employees was a factor in Mr. Smith's firing, and remanded the case to the trial court.

Significantly, the Court was careful to emphasize that the LAD does not preclude employers from implementing and enforcing anti-nepotism policies in the workplace that permit employers to restrict employees related by blood or marriage from working together. However, the policies must be enforced in a nondiscriminatory manner and in strict adherence to the LAD. Additionally, the Court noted that employers are allowed to discipline employees based on performance and conduct, irrespective of their marital status, so long as the reason for their discipline is not related to circumstances in the employee's personal life.

Take-away for New Jersey employers

Employers in New Jersey should use caution when hiring, promoting, disciplining or terminating an employee based on marital status in any respect. Adverse employment actions, including termination, cannot be based on an assumption about an employee's inability to perform the job related to marital status - such as concerns about the stress, distraction, or absenteeism - that an engagement, marriage, separation, divorce, or death of a spouse *may* cause. Rather, employment decisions should be based on actual workplace conduct or performance issues that are clearly and appropriately documented, and not related to marital status.

Further, employers should consider whether to adopt policies on workplace romance, fraternization, or nepotism - or whether they need to revise their existing policies - if they are concerned about the

potential fallout when employees in a relationship work with each other.

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