

Alert | Labor & Employment



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Out-of-State Workers Can Assert Claims Under New Jersey Anti-Discrimination Law

On June 27, 2019, New Jersey’s Appellate Division **ruled** that New Jersey’s Law Against Discrimination (NJLAD) can extend “in appropriate circumstances” to plaintiffs who reside or work outside of the state where New Jersey has the “most significant relationship” to the claims. *Calabotta v. Phibro Animal Health Corp., et al.*

Plaintiff Claimed “Associational” Discrimination in Violation of NJLAD

In 2008, New Jersey-based Phibro Animal Health Corporation (Phibro) hired plaintiff David Calabotta to serve as vice president of marketing and technology deployment for Prince Agri Products Incorporated, a Phibro subsidiary located in Quincy, Illinois.

In June 2016, Phibro created a new position based at its headquarters in New Jersey for a senior vice president of marketing and product management. Plaintiff alleged that despite expressing interest in the new position, he was not interviewed because of his wife’s terminal breast cancer diagnosis. Plaintiff was terminated in August 2016, following allegations he acted inappropriately at a national conference.

Plaintiff filed a complaint in the Superior Court of New Jersey against Phibro, his supervisor, and the senior VP of human resources, who investigated the allegations and terminated his employment. Plaintiff alleged defendants discriminated against him in violation of NJLAD “on account of his association with a person with a disability” when (1) they refused to consider him for a promotion in New Jersey, and (2)

they subsequently terminated his employment. The trial court originally dismissed plaintiff's complaint, reasoning he had no viable cause of action under NJLAD as an Illinois resident who worked for the company's subsidiary in Illinois.

Appellate Division Applies NJLAD to Plaintiff's Failure-to-Promote Claim, Leaves Issue Open on Wrongful Discharge Claim

The Appellate Division first determined that the legislature intended for NJLAD to extend to certain nonresident plaintiffs based on its broad public policy goal of eradicating "the cancer of discrimination" and its failure to define "person" or "individual" to include only New Jersey residents or employees. The court then applied the conflicts-of-law analysis from the Second Restatement, which requires courts to determine the state with the most significant relationship to the claims asserted.

The court ruled that New Jersey law governed plaintiff's failure-to-promote claim since it furthered uniformity to apply the laws of the state where the job opening existed, protected applicants' expectations that the laws of that state would govern the hiring and selection process, and advanced the "strong and expansive" policies of NJLAD. The court also found that New Jersey had the most significant relationship to plaintiff's failure-to-promote claim since the future relationship would have been "centered" in New Jersey.

The court remanded plaintiff's wrongful discharge claim for a fuller development of the facts. Though it was uncertain from the record where the actions and decisions that led to plaintiff's removal took place, the court hinted that Illinois law would likely govern plaintiff's claim, as he was removed from his position in Illinois.

Key Takeaways

NJLAD is one of the most expansive anti-discrimination laws in the country, and *Calabotta* is a stark reminder that even employees who live and work outside New Jersey may seek its protection against their New Jersey-based employers. New Jersey employers facing such claims may face challenges in seeing them dismissed. In light of *Calabotta*, New Jersey employers may want to consider including choice-of-law clauses in employment contracts as a means to try to control venue selection.

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