

NEW JERSEY EMPLOYMENT LAW UPDATE

By Joseph C. DeBlasio, Esq.

July provided three (3) important New Jersey case decisions, each impacting claims under the New Jersey Law Against Discrimination (“NJLAD”). The Supreme Court of New Jersey issued its highly anticipated decision in Cutler v. Dorn, addressing the correct legal standard for claims of hostile work environment harassment based on religious faith or ancestry. Additionally, the Appellate Division handed down two (2) significant published decisions. The decision in Roa v. Roa holds that employers’ post-termination conduct, even when not related to the workplace, can serve as a stand-alone basis for retaliation under the NJLAD. In Victor v. State of New Jersey, the Appellate Division held for the first time that a disabled employee alleging a failure to provide a reasonable accommodation must be able to show an adverse employment action resulting from the failure to provide the accommodation.

Supreme Court Addresses Legal Standard for Religious Harassment Claims

The July 31 decision by the Supreme Court of New Jersey in Cutler v. Dorn addressed a claim of religious-based hostile work environment harassment. This decision was highly anticipated because of the controversy surrounding the Appellate Division’s decision to dismiss plaintiff’s claim. The plaintiff, a Jewish police officer, alleged he was subjected to a hostile work environment on the basis of his religion and ancestry. According to plaintiff, he was often referred to as “the Jew,” asked why he does not have a “big Jew nose,” found an Israeli flag sticker and a German flag sticker placed on his locker, and subjected to comments that included the phrase, “dirty Jews.”

A jury verdict was entered in favor of the plaintiff but the jury awarded no damages. The Appellate Division reversed the verdict, finding that the conduct complained of constituted only joking and teasing, and was not sufficiently “severe or pervasive” to support the jury’s verdict. The Supreme Court of New Jersey reversed the Appellate Division. In doing so, the Supreme Court also disavowed the 1999 decision by the Appellate Division in Heitzman v. Monmouth County, which is a case decision often relied upon by

See Update pg 2



Joseph C. DeBlasio

Practice Area
Labor and Employment Law

About the author:

Mr. DeBlasio has devoted his entire career exclusively to the representation of management in all aspects of labor and employment-related matters. He specializes in defending against claims of alleged wrongful discharge, discrimination, harassment, retaliation, wage-and-hour violations and whistleblowing. He represents employers in administrative agencies; jury trials; negotiation and enforcement of employment agreements and restrictive covenants; labor-injunction matters in federal and state courts; and labor arbitrations under collective bargaining agreements. He counsels employers in all labor and employment-related matters.

For more information, please contact
Joseph C. DeBlasio at 732-741-3900
or jdeblasio@ghclaw.com

or
Jay S. Becker at 732-741-3900
or jbecker@ghclaw.com

Update (continued)

defense counsel in hostile work environment cases. The Supreme Court observed it never had the opportunity to review the decision by the Appellate Division in Heitzman.

The Supreme Court held that in hostile work environment claims involving religious faith or ancestry, “the inquiry is whether a reasonable person of plaintiff’s religion or ancestry would consider the workplace acts and comments made to, or in the presence of, plaintiff to be sufficiently severe or pervasive to alter the conditions of employment and create a hostile working environment.” As a result of this decision, employers should expect a continued increase in claims of hostile work environment harassment on the basis of religion. Employers also should expect a decrease in the number of these cases dismissed prior to trial.

Appellate Division Creates New Cause of Action for Conduct Unrelated to Workplace

Roa v. Roa is important because it creates a cause of action under the NJLAD for conduct that is not related to the workplace. In Roa, one of the plaintiffs claimed the employer “lied” when it opposed her claim for unemployment benefits by stating she was discharged for “misconduct.” The Appellate Division held an allegation that the employer contested a claim for unemployment benefits “on false grounds” could constitute unlawful retaliation under the NJLAD. Similarly, the other plaintiff in Roa alleged the employer prematurely terminated his medical insurance, which he did not discover until months after the termination of his employment. The Appellate Division held that this also could support a claim of retaliation under the NJLAD. Roa is equally significant because the post-termination acts of alleged retaliation were used by the court to trigger the “continuing violation” exception to the statute of limitations, thus allowing plaintiff to maintain claims that otherwise would have been time-barred.

No Cause of Action for Failure to Accommodate a Disability Unless Adverse Employment Action Occurred

The Appellate Division’s decision in Victor v. State of New Jersey scores a triumph for employers. The plaintiff, a New Jersey State Trooper, suffered from various physical and emotional ailments. On December 11, 2003, the plaintiff requested to perform administrative office tasks in lieu of his regular patrol duties because the body armor worn during patrol exacerbates his back condition. His request was denied. The plaintiff prevailed at trial on various claims, including his claim that he was denied a reasonable accommodation for his disability. The Appellate Division reversed the jury verdict because plaintiff was not required at trial to prove that the denial of his request for office work resulted in an adverse employment action. The Appellate Division held, “we can conclude that an employer’s adverse employment action must rise above something that makes an employee unhappy, resentful or otherwise cause an incidental workplace dissatisfaction.” This is the first New Jersey case to affirmatively hold that a denial of a reasonable accommodation must result in an adverse employment action for the claim to be actionable under the NJLAD.



GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW

*125 Half Mile Road, Ste. 300
Red Bank, NJ 07701
(732) 741-3900*

*441 East State St.,
Trenton, NJ 08608
(609) 695-3900*

www.ghclaw.com

*The material provided in this
newsletter is intended to be used as
general information and should not
replace the advice of your attorney.*

ALL RIGHTS RESERVED © 2008
GIORDANO, HALLERAN & CIESLA, P.C.