

Employers: Don't Forget About the Possibility of Associational Discrimination Liability

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A case out of a New York State appeals court should remind employers that they may be liable for discrimination where they take an adverse action against an employee based on the employee's association with someone in a protected class.

In ***Chiara v. Town of New Castle***, a former Town employee alleged religious discrimination and harassment in violation of the ***New York State Human Rights Law***. His claim wasn't based on his religion though; it was based on his wife's religion. The plaintiff wasn't Jewish, but he married a Jewish woman, and he alleged that because of his association with someone in a protected class, his supervisors harassed him, including by directing anti-Semitic remarks his way, and ultimately fired him.

The trial court entered summary judgment for the Town on both the discrimination and harassment claims. On appeal, the Second Department Appellate Division reversed on the discrimination claim. It confirmed that the *NYS Human Rights Law protects individuals who are the victims of "discriminatory animus towards third persons with whom the individuals associate."* In this case, the former employee put forward sufficient evidence such that a jury should decide whether the reasons for his termination (various performance issues) were pretext for discrimination or were motivated in part by discrimination – that is, he was really fired because of his association with his Jewish wife. Specifically, the record showed that (i) various Town supervisors made anti-Semitic remarks in the employee's presence during the time the Town brought disciplinary charges against him; and (ii) some of those supervisors testified at the disciplinary hearing, which resulted in his termination. The court affirmed on the harassment claim, however. The Town, the court found, had sufficiently disciplined a worker for directing anti-Semitic remarks to the former employee years before the termination, and the other remarks were not sufficiently severe or pervasive to interfere with his work.

The analysis would have likely been the same Title VII (Federal) and/or the New York City Human Rights Law (local) come into play. These laws each work to remove artificial barriers to employment opportunities for individuals that grow out of prejudice or stereotypical assumptions about groups of people based upon protected classes – whether the individual is in the protected class and even when they associate with someone else in a protected class. They aim to ensure that employers use neutral, job-related criteria in making employment-related decisions. Here, there was a question over whether the Town injected religion into its decision to terminate the plaintiff, even if it was someone

else's religion.

Employers should update their anti-discrimination and harassment policies and training programs to account for associational discrimination. They should also be aware that associational discrimination claims are not limited to family relationships; instead, what matters is whether the employer was motivated by the individual's relationship or association with a person in a protected class.

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National Law Review, Volume V, Number 29

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