

EMPLOYMENT ALERT

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D.C. COURT OF APPEALS EXTENDS REACH OF DISCRIMINATION, RETALIATION PROHIBITIONS

From time to time, clients ask us whether the D.C. Human Rights Act applies to employees who do not work in the District. The question is an important one because many organizations have headquarters in the District, and many employers with offices here have employees who work in suburban Maryland or Northern Virginia. A recent decision by the D.C. Court of Appeals expands the DCHRA to cover employees who never work in the District.

Several years ago, the Court of Appeals issued a decision touching on this subject. In that case, an employee who worked in Maryland for a D.C. company alleged that she had been sexually harassed in violation of the DCHRA. The Court of Appeals ruled that the DCHRA protected her from harassment. However, the employee in that case had sometimes worked in the employer's offices in the District, and some of the alleged harassment occurred there.

The new decision by the Court of Appeals tackles a more clear-cut situation. The employee in the case, Monteilh, *never worked* in the District. In fact, he worked rather far away, in California and later in Georgia. His employer, AFSCME, however, is headquartered in the District. Monteilh sued AFSCME in the District alleging that AFSCME failed to promote him due to his race and age and then retaliated against him because of his allegations of discrimination. The Court held that Monteilh could sue AFSCME under the DCHRA because the evidence showed that some of AFSCME's decisions about Monteilh's employment were made in the District.

The Court held that the DCHRA applies if "the employer has made a discriminatory decision in the District of Columbia, although the effects have been felt elsewhere." In so ruling, the Court rejected AFSCME's argument that the DCHRA should apply only to employees who have worked (or sought to work) in the District. The Court added that an employee has to show more than simply that "the company is headquartered here or has offices here. Either the [employment] decision must be made, or its effects must be felt, or both must have occurred, in the District." The Court remanded the case to the trial court to determine which of the challenged employment actions were the result of decisions made in the District of Columbia.

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While extending the reach of the DCHRA to far-flung workplaces, the Court's decision leaves open some questions. For example, what does it mean that a "decision" was made in the District? AFSCME pointed out that in Monteilh's case, most of the employment decisions were made outside the District, while management in the District merely "ratified" those decisions. Now that the case has been sent back to the trial court, that court presumably will need to rule on whether decisions were "made" in the District, and whether ratification, concurrence, assent and the like by District personnel is sufficient to meet that standard.

If you have any questions about this new legal ruling, please feel free to contact us.

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