A Timely Analysis of Legal Developments

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**In This Issue:**

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The District of Columbia Court of Appeals has expanded the reach of the antidiscrimination provisions of the District of Columbia Human Rights Act (DCHRA). The court held that employees located outside of D.C. may bring claims for discrimination under the more protective provisions of the DCHRA so long as the discrimination decision was made in D.C.

# Court of Appeals Expands Reach of D.C. Anti-Discrimination Law to Applicants and Employees Outside of D.C.

**By Alison N. Davis and Hannah R. Farber**

The District of Columbia Court of Appeals, in *Monteilh v. AFSCME, AFL-CIO*, 107 FEP Cases 561 (D.C. 2009), recently held that employees located outside of the District may bring claims under the District of Columbia Human Rights Act (DCHRA). The court of appeals determined that, regardless of where the affected employee works, so long as the discriminatory decision is made in the District of Columbia, the DCHRA applies. The decision likewise applies to prospective employees.

## Background Facts

The American Federation of State, County and Municipal Employees (AFSCME) is headquartered in D.C. from which it oversees regional offices across the country. Louis Monteilh began working for AFSCME in 1976 as a union organizer in his home state of California. During his more than 19 years of employment, Monteilh was never promoted to a managerial position despite having applied for numerous positions. At one point, he was transferred from California to Georgia. Monteilh filed grievances objecting to being passed over for promotion and transferred. At no time during Monteilh's employment did he perform any services in D.C. or apply for positions in D.C.

## Trial Court Dismissal

In 2005, Monteilh filed a complaint in the D.C. Superior Court under the DCHRA. In his complaint, he alleged that the decisions to audit his expense reports, and not to promote him to management were discriminatory. Monteilh also alleged that AFSCME transferred him in retaliation for complaining about discrimination.

The D.C. Superior Court granted AFSCME's motion to dismiss. The trial court found that AFSCME personnel located in D.C. made at least some of the allegedly discriminatory decisions and that some of the decisions were approved or endorsed at headquarters in D.C. Nevertheless, the court found there was no subject matter jurisdiction because the effect of the decision was felt exclusively outside of D.C., and the decision affected no position or application for employment in D.C.

## Court of Appeals Focuses on Where Decision Is Made or Effect Is Felt

The Court of Appeals disagreed with the trial court. Noting the necessity of eradicating discrimination, the court found that, consistent with precedent, it was appropriate to read the DCHRA expansively. Contrasting the DCHRA with the Maine antidiscrimination statute, which explicitly limits claims to those which Maine residents bring for alleged violations that occur in Maine, the D.C. Court of Appeals found that it was not appropriate to limit the DCHRA's application only to persons applying for positions or working in D.C.

According to the court, it is where the allegedly discriminatory decision is made or the effect of the discriminatory decision is felt, or both, that determines whether the DCHRA applies. Since, in *Monteilh*, employment decisions were made in D.C. that affected Monteilh, the court did not need to reach the issue of whether personnel decisions made by managers outside of D.C., but reviewed and approved at headquarters within D.C., are subject to the DCHRA. Rather, the court remanded the case based upon the fact that the complained of employment decision was made in D.C., and thus the DCHRA applies, regardless of whether the employee ever worked in D.C.

## Significance of *Monteilh* for Employers with D.C. Managers

While in *Monteilh* the employer was headquartered in D.C., this decision impacts any employment decisions that emanate from D.C. In the 21st Century workplace, it would not be unusual for a manager in D.C. to supervise an employee thousands of miles away, or for applications to be screened in D.C. for positions in locations outside of the district. After *Monteilh*, D.C. managers need to understand that when making a decision that impacts an employee or applicant located outside of D.C., it is as if the person down the hall is impacted. Also, simply approving an allegedly discriminatory decision that is made outside D.C. may provide an opportunity for a person to bring a DCHRA claim.

Significantly, the risks of litigation associated with making employment decisions impacting persons located outside of D.C. may have increased because the DCHRA is more protective than many other jurisdictions. For example, the DCHRA includes 18 protected categories. In addition to the familiar protected categories under Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act and the Genetic Information Nondiscrimination Act, the DCHRA prohibits discrimination based upon:

- source of income
- gender identity or expression
- sexual orientation
- marital status
- personal appearance
- matriculation in school
- family responsibilities/familial status
- political affiliation
- place of residence or business

Like Title VII and the ADA, to prevail on a claim under the DCHRA, the individual does not need to prove that discriminatory animus wholly motivated the decision. It just has to be a motivating factor. The individual does not need to file a complaint with the D.C. Office of Human Rights. The individual can immediately file a lawsuit. Most significantly, for managers, individuals may be held personally liable under the DCHRA, and there is no cap on damages. Thus, depending on where the person is located, it may be more advantageous for that person to file a claim under the DCHRA.

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