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New Jersey Division on Civil Rights Publishes Guidance on Discrimination and Out-of-State Remote Workers

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On May 14, 2024 the New Jersey Office of the Attorney General and the Division on Civil Rights (DCR) published guidance on Discrimination and Out-of-State Remote Workers. This guidance, which is not legally binding, aims to clarify the DCR's position on how the New Jersey Law Against Discrimination (LAD) applies to all workers who are employed by New Jersey-based companies, including remote workers.

The LAD prohibits New Jersey employers from discriminating based on actual or perceived sexual orientation, gender, gender identity, gender expression, age, race, color, national origin, ancestry, religion, disability, and other protected characteristics. While the general protections and prohibitions under the LAD have long existed, the COVID-19 pandemic and related rise in hybrid and remote working arrangements raised questions as to how the LAD applies to remote workers.

Most notably, the guidance highlights that the definitions of a covered "person" under the LAD and the LAD's substantive protections include no geographic restrictions. As such, under the guidance any employee working for a New Jersey employer can seek remedies for LAD violations, regardless of where the employee resides or where they physically work. This differs from how other jurisdictions approach the scope of state anti-discrimination law protections. For example, New York utilizes an "impact test" and looks to whether New York is the place where the impact of the alleged discriminatory conduct is felt for purposes of coverage under the New York State Human Rights Law.

The NJ guidance notes that this interpretation is supported by case law precedent from both state and federal courts interpreting the reach of the LAD. It also reiterates that the LAD is intended to be liberally construed to achieve its purpose of eliminating discrimination. That being said, the guidance recognizes that the protections under the LAD do not automatically extend to individuals who work for a company based in a state other than New Jersey. For example, the LAD may not apply to employees who work remotely in New Jersey for an employer in another state, or to employees who commute from New Jersey to work for an employer in another state. Rather, such employees would need to establish a nexus between their employer and New Jersey for the LAD to apply.

Special thanks to summer associate Morgan R. Martin for their assistance in preparing this update.

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