

Single Mother Cannot Pursue LAD Claim Based on Familial Status Against Her Employer

December 8, 2011

The United States Court of Appeals for the Third Circuit recently affirmed that New Jersey's Law Against Discrimination ("LAD") does not prohibit employers from discriminating on the basis of familial status.

In *Iovanella v. Genentech, Inc.*, No. 11-1266, 2011 WL 5833170 (3d Cir. Nov. 21, 2011), the plaintiff alleged that her former employer, Genentech, Inc., discriminated against her because she was, *inter alia*, a single mother. Specifically, the plaintiff's manager allegedly refused to replace her BlackBerry, which she had received as an exception to company policy because she was a single mother. Further incidents with her superiors allegedly prompted the plaintiff to resign and file suit in the United States District Court for the District of New Jersey. The District of New Jersey held, and the Third Circuit affirmed, that LAD's employment provisions do not encompass familial status.

The Third Circuit reached its conclusion based on the plain text of the law. It reasoned that, since LAD expressly protects familial status in the context of housing, its absence from the list of classes insulated from employment discrimination was intentional. The Third Circuit expressly endorsed *Bumbaca v. Township of Edison*, 373 N.J. Super. 239 (App. Div. 2004), *certif. denied*, 182 N.J. 630 (2005), the lone state court decision which reached the same conclusion based on a similar textual analysis. Although the New Jersey Supreme Court has yet to decide the issue, the decisions in *Iovanella* and *Bumbaca* persuasively demonstrate that LAD does not recognize a cause of action for differential treatment based on familial status. The office of the state's attorney general also has posted guidance stating that "familial status is only protected with respect to housing." See <http://www.nj.gov/lps/dcr/law.html>.

Employers should note that, although the current state of the law does not recognize a claim for employment discrimination based on familial status, employees still may pursue a claim for gender discrimination based on the same underlying facts. Thus, employers should exercise caution before considering the familial status of their applicants and employees in their decision making.

* * *

If you have any questions or concerns regarding LAD or the Third Circuit's decision, please contact the lawyers at Proskauer.