CLIENT ALERT: Massachusetts' High Court Rules Small Businesses Subject To Anti-Discrimination Law

On October 24, 2008, Massachusetts' high court ruled that employees of small businesses, defined as fewer than six employees, may bring claims of unlawful employment discrimination on the basis of sex, race, color, creed or national origin. This is the first time that the Massachusetts Supreme Judicial Court has recognized that an employer with fewer than six employees may be subject to state anti-discrimination law. The case is Thurdin v. SEI Boston, LLC.

SEI Boston, LLC ("SEI Boston") is a small company, employing only three people. About one month after being hired as a technology consultant, plaintiff informed her supervisor that she was pregnant. According to the complaint filed, the supervisor was upset because of the unfair burden plaintiff placed on the small company, and the plaintiff was placed on unpaid administrative leave.

Plaintiff first filed a charge with the Massachusetts Commission Against Discrimination ("MCAD"), the state agency responsible for processing discrimination claims, alleging that SEI Boston discriminated against her in violation of the Massachusetts anti-discrimination statute, Mass. Gen. Laws ch. 151B ("Chapter 151B"). That charge was dismissed for lack of jurisdiction because Chapter 151B prohibits unlawful discrimination by "employers" and defines "employers" as having six or more employees. Plaintiff's federal claim under Title VII was likewise dismissed because Title VII, by its terms, only applies to employers with fifteen or more employees. Thus, the plaintiff had no recourse for her claims under the traditional statutory framework of Chapter 151B or Title VII.

Nonetheless, the plaintiff brought a claim in Massachusetts state court under the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 102 ("MERA"). MERA provides, in part, that "[a]ll persons within the commonwealth, regardless of sex, race, color, creed or national origin, shall have... the same rights enjoyed by white male citizens, to make and enforce contracts..." After considering the legislative history of MERA and Chapter 151B, the Supreme Judicial Court ruled that where an employee is not able to bring a claim for employment discrimination under Chapter 151B because the employer has fewer than six employees, an employee may bring a claim under MERA. The Court also concluded that the language of MERA was broad enough to encompass discrimination in any aspect of the employment relationship, including the alleged termination of an employee because of her pregnancy.

Employers with fewer than six employees must be aware of the Court's decision. MERA, unlike Chapter 151B, does not require litigants to first file a claim with the MCAD. Employees of small businesses may now bring claims under MERA alleging discrimination on the basis of sex, race, color, creed or national origin. Further, for employees of small businesses, the Court's decision implies that age (over 40) and disability are also protected classes pursuant to Mass. Gen. Laws ch. 93, § 103.

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Given the resources that must be devoted to employment litigation, small businesses must be vigilant in ensuring that their policies and practices comply with the law, and that their managers are sensitive to potential claims under MERA. The Thurdin decision does not change case law that holds employees at an employer with six or more employees must bring a claim under Chapter 151B (and not MERA) and must first file a charge of discrimination with the MCAD or EEOC.

Jeffrey S. Siegel, Esq. is an attorney with Morgan, Brown & Joy, LLP. Jeff may be reached at (617) 523-6666 or at jsiegel@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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