

PUTNEY, TWOMBLY, HALL & HIRSON LLP

DANIEL F. MURPHY, JR.
MICHAEL T. McGRATH
THOMAS A. MARTIN
WILLIAM M. POLLAK
JAMES E. McGRATH, III
CHRISTOPHER M. HOULIHAN
THOMAS M. LAMBERTI
STEPHEN J. MACRI
HARVEY I. SCHNEIDER
MARY ELLEN DONNELLY
JOSEPH B. CARTAFALSA
GEOFFREY H. WARD
ANDREA HYDE
E. PARKER NEAVE
MARK A. HERNANDEZ
JAMES M. STRAUSS
PHILIP H. KALBAN
SEAN H. CLOSE
LANSING R. PALMER
JEROME P. COLEMAN
BARBARA M. MAISTO

ESTABLISHED 1866
COUNSELORS AT LAW
521 FIFTH AVENUE
NEW YORK, NEW YORK 10175
(212) 682-0020
TELEFAX: (212) 682-9380
PUTNEYLAW.COM

120 WOOD AVENUE SOUTH
SUITE 600
ISELIN, NEW JERSEY 08830
(732) 632-2505
TELEFAX: (732) 632-2506

1205 FRANKLIN AVENUE
GARDEN CITY, NY 11530
(516) 746-0070
TELEFAX: (516) 746-0599

2500 NORTH MILITARY TRAIL
SUITE 200
BOCA RATON, FLORIDA 33431
(800) 935-8480
TELEFAX: (561) 393-9707

COUNSEL
CHARLES J. GROPPE
ALEXANDER NEAVE
DUSTAN T. SMITH

SPECIAL COUNSEL
JUDITH M. BANDLER

May 21, 2009

CLIENT ALERT

**Out-of-State Employees May Sue New York Employers
Under the State and City Human Rights Laws**

On May 7, 2009 the New York Appellate Division, First Department held that New York courts have subject matter jurisdiction over discrimination claims filed under the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Law (“NYCHRL”) where the act of discrimination occurred within New York, even if the effects of the alleged discrimination are felt primarily outside the state. *Hoffman v. Parade Publications*, 2009 NY Slip Op 3678 (N.Y. App. Div. May 7, 2009)

In *Hoffman*, a salesman who worked and resided in Georgia brought an action for age discrimination under the NYSHRL and NYCHRL when he was terminated from his employment at Parade Magazine. Plaintiff alleged that the termination decision was made at the company’s office in New York City. Plaintiff also alleged that he reported to, and occasionally traveled to meet with, the company’s management in New York City. Plaintiff further alleged that, after being informed of the decision to terminate his employment but prior to the effective date of termination, he traveled to New York City to discuss alternatives to his termination.

Parade Magazine moved to dismiss the action on the grounds that the New York court lacked subject matter jurisdiction over the action because the alleged misconduct did not occur either in New York City or State. The lower court agreed, citing *Shah v. Wilco Systems, Inc.*, 27 A.D.3d 169 (2005), a First Department decision which held that a New York court had no jurisdiction over a discrimination claim brought by a New Jersey employee who was informed of her termination in New Jersey. In its decision, the *Shah* court announced that “the locus of the decision to terminate [the employee] is of no moment. What is significant is where the impact is felt.”

Court Rejects “Impact Rule”

Without expressly overruling *Shah*, the *Hoffman* court refused to apply the impact rule articulated in *Shah*. It explained that *Shah*’s “locus . . . is of no moment” language was not necessary to the holding and was unsupported by prior precedent. According to the *Hoffman* court, the impact rule should not be applied so broadly as to preclude any discrimination action “where the allegations support the assertion that the act of discrimination was made in New York.” Instead, the court followed the reasoning of the federal district court in *Rylott-Rooney v. Alitalia-Linee Aeree Italiane-Societa Per Azioni*, 549 F. Supp. 2d 547 (S.D.N.Y. 2008), which focused on whether the alleged discriminatory action took place within New York.

In *Rylott-Rooney*, an employee who lived and worked in Minnesota brought an action for discrimination when she was terminated while temporarily visiting in New York. The district court held that subject matter jurisdiction in a New York court was proper, explaining that the NYSHRL and NYCHRL apply either when the initial *discriminatory act* (i.e., the termination) occurs in New York or when the original experience of *injury*, which occurs at the employee’s workplace, is in New York.

Relying on *Rylott-Rooney*, the *Hoffman* court found it significant that the plaintiff had received a call from New York notifying him of his termination and had subsequently traveled to New York to discuss the termination. Thus, according to the *Hoffman* court, the fact that the termination decision occurred in New York was sufficient, on its own, to establish discrimination “within” New York, even if, as the employer argued, the employee felt the effects of the termination only in Georgia. The *Hoffman* court also explained that it would be improper for courts of other jurisdictions to respond to acts of discrimination that allegedly occurred in New York.

Significance for Employers

Employers should be aware that, as a result of the *Hoffman* decision, an out-of-state employee may be able to seek redress in New York courts for allegations of employer misconduct when the allegedly discriminatory decision was made in New York. Employers should consider addressing this possibility when entering into employment contracts and termination and release agreements with out-of-state employees. We are available to assist you in this regard.

Of course, if you should have any questions regarding this decision, please contact us.

PUTNEY, TWOMBLY, HALL & HIRSON LLP