

EMPLOYMENT NEWS ALERT

FEBRUARY NEWSFLASH

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BUSINESS-TO-BUSINESS DISCRIMINATION

In NJ, a Refusal to Do Business with a 3rd Party Contractor Can Violate the LAD

A New Jersey appeals court recently held that a refusal to do business with a particular vendor can form the basis of a sexual harassment claim if there is an allegation that the business relationship ended because of sexual discrimination. Sexual harassment lawsuits are usually brought under the employment discrimination provision of the NJ Law Against Discrimination at N.J.S.A. 10:5-12(a). In [J.T.'s Tire Service v. United Rentals North America, Inc.](#), A-2989, the plaintiff apparently chose to bring her lawsuit under a different provision of the LAD, specifically N.J.S.A. 10:5-12(l), which makes it illegal to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of gender. The provision applies to those other characteristics generally protected by the LAD, including, among others, race, age, national origin, disability, veteran status, and sexual orientation.

One may view this as another new reality for New Jersey employers. But it really is not so new after all. Independent contractors have had some success in pursuing employment discrimination claims despite the lack of their status as employees. NJ courts have consistently extended the protections of the LAD to new classes of plaintiffs, including independent contractors, primarily on the basis that the LAD contains a provision making it unlawful to refuse to contract with a person on the basis of an LAD-protected characteristic. It is clear then that the LAD regulates commercial transactions, at least to the extent that a Company's actions are alleged to be motivated by a discriminatory consideration.

However, the federal discrimination statute that prohibits discrimination in the making and enforcement of contracts, commonly known as Section 1981, the Civil Rights Act of 1866 at 42 U.S.C. 1981, directly contradicts this view. The US Supreme Court, in [Domino's Pizza v. McDonald](#), limited the protections of Section 1981. There, John McDonald, a sole shareholder in a company that contracted with Domino's Pizza for construction of a restaurant alleged the contract was terminated because of his race. McDonald's claim was dismissed because he was not a party to the contract at issue in the Section 1981 litigation.

WHAT YOU CAN DO NOW TO PROTECT YOUR COMPANY

As is typical in the ever-changing area of employment law in New Jersey, there are multiple, sometimes conflicting, laws to be interpreted and applied to the workplace. New Jersey employers need to take appropriate steps to insulate themselves not only from potential discrimination claims by workers and independent contractors, but now also by vendors and other contracting parties. Employers should think about whether their internal harassment and discrimination complaint procedures need to be extended to third-party contractors in order to mitigate claims of discrimination relating to termination or non-renewal of contracts.

BE PREPARED! We have the expertise to help you review your procurement procedures and contracts and to implement the right policies to address these issues so as to minimize your Company's exposure to this new potential threat. **CALL NOW!**

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