New York Court of Appeals Rejects Vicarious Liability for Business Owners Under the New York City Human Rights Law

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On February 11, 2021, the New York Court of Appeals ruled in a closely watched case, *Doe v. Bloomberg, L.P.*, which threatened to expand potential vicarious liability to business owners under the employment discrimination provisions of the New York City Human Rights Law ("City HRL"). In a 6-1 decision, the court held that individual owners, employees, agents and limited partners of a business entity cannot be held vicariously liable for employment discrimination by the entity's employees and that such persons may be held individually liable only if their own personal conduct violates the City HRL.

Debevoise submitted a successful *amicus curiae* brief to the Court of Appeals, on behalf of the Partnership for New York City, advocating for the position ultimately adopted by the majority and arguing that vicarious liability for owners and other individuals would not advance the broad remedial aims of the City HRL and instead would violate foundational principles of corporate law.

The Court of Appeals Decision. The plaintiff, a former employee of Bloomberg, L.P., using the pseudonym Margaret Doe, alleged that her direct supervisor sexually harassed and abused her. She brought employment discrimination claims under the City HRL not only against the supervisor and Bloomberg, L.P. but also against Michael Bloomberg in his individual capacity. Doe did not allege that Mr. Bloomberg knew of or participated in the supervisor's alleged wrongdoing. Rather, she argued that, as the owner and CEO of Bloomberg L.P., Mr. Bloomberg was an "employer" under the City HRL and therefore could be held vicariously liable for the supervisor's discriminatory conduct.

Mr. Bloomberg moved to dismiss the claims against him. The trial court denied his motion. The Appellate Division reversed, holding that an owner or officer of a corporate employer could be "held personally liable in his capacity as an employer" only if he or she "encouraged, condoned or approved of the employee's discriminatory conduct." New York's highest court, the Court of Appeals, then agreed to hear the case, and the employment law bar and business community of New York City have been anticipating the Court of Appeals' guidance as to whether owners and other individuals may be held vicariously liable.

The Court of Appeals affirmed the dismissal of the claim against Mr. Bloomberg, holding that "[w]here a plaintiff's employer is a business entity, the shareholders, agents, limited partners, and employees of that entity are not employers within the meaning of the City HRL." Instead, the Court explained, those individuals may be held liable only for their own violations of the City HRL—*i.e.*, "for their own discriminatory conduct, for aiding and abetting such conduct by others, or for retaliation against protected conduct." Applying this test, the court held that Doe's allegations that Mr. Bloomberg "fostered a culture of discrimination and sexual harassment at Bloomberg L.P., based primarily on news articles and reports of a deposition in an unrelated case," were insufficient to state a claim against him under the City HRL.

Implications. The court's ruling eliminates the uncertainty surrounding the definition of "employer" under the City HRL and the resulting potential for vicarious liability for business owners and other individuals. The decision establishes that shareholders, agents, limited partners and employees of a corporate employer cannot be vicariously liable for another employee's violations of the City HRL.

The decision does not, however, displace the scope of vicarious liability for corporate and other business entity employers under the City HRL. Entities may still be held strictly liable for unlawful discrimination by a managerial or supervisory employee or may be held liable for discriminatory acts by any employee if the employer knew or should have known of the misconduct and failed to take certain steps to address it.

Looking Forward. In light of this decision, New York City businesses should consider taking the following actions:

Review anti-harassment and discrimination training practices for managerial or supervisory employees, including executives. Although New York City businesses are already required to conduct sexual harassment prevention training for employees on an annual basis, they should consider enhanced or supplemental training for managerial or supervisory employees.

Review reporting mechanisms for employment discrimination. Consider taking steps to reinforce anti-discrimination policies and reiterate points of contact for employees and managers to direct concerns, ask questions and report harassment or discrimination.

Follow developments at City Hall. In response to the Court of Appeals' decision, the City Council may amend the City HRL to allow for vicarious liability for individual owners or executives of corporate employers.

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