

## The First Department Appellate Division Adopts An Expanded Definition of Marital Status Discrimination Under the New York City Human Rights Law

In 1980, the New York Court of Appeals (the highest court in New York) held that the prohibition against “marital status” discrimination contained in the New York State Human Rights Law includes only discrimination based on the status of being married or not married, and does not prevent an employer from taking an adverse employment action against an employee based on the identity or occupation of a person’s spouse. In that case, *Manhattan Pizza Hut, Inc. v. New York State Human Rights Appeal Board*, the Court upheld the employer’s decision to discharge the plaintiff because her husband was employed as her supervisor in violation of the employer’s anti-nepotism policy. In a recent decision, however, the First Department Appellate Division adopted a more expanded definition of marital status discrimination under the New York City Human Rights Law.

In *Morse v. Fidessa Corporation*, the plaintiff alleged that he was suspended and then discharged from his employment with a financial services company because his employer believed he was married to an employee, Lael Wakefield, who had recently resigned to take a position at another financial services company. The plaintiff alleged that he was told that he would be reconsidered for employment if he and Ms. Wakefield got divorced. According to the plaintiff, he and Ms. Wakefield were actually divorced but were still living together and were perceived by the employer as being still married to each other.

The lower court recognized that, based on the Court of Appeals’ *Manhattan Pizza Hut* decision, the plaintiff would not be able to state a cause of action for marital status discrimination under the State Human Rights Law. However, the lower court also pointed out that the NYC Human Rights Law was amended in 2005 by the Local Civil Rights Restoration Act, which stated that the provisions of the NYC Human Rights Law “shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.”

Accordingly, the lower court determined that the *Manhattan Pizza Hut* decision did not limit its ability to interpret the marital status discrimination prohibition in the NYC Human Rights Law more broadly than the manner in which the similar prohibition in the State Human Rights Law had been interpreted. The lower court held that the prohibition against marital status discrimination in the NYC Human Rights Law could encompass discrimination based on the identity or occupation of an employee’s spouse (or perceived spouse), and denied the employer’s motion to dismiss the complaint.

The First Department affirmed the lower court’s decision on September 6, 2018. The First Department held: “As the most plaintiff-friendly reasonable interpretation, it is the one that must be adopted.”

Although the *Morse* case did not involve the application of an anti-nepotism policy, there is certainly the potential at this point that such a policy enforced by a New York City employer might be challenged as a violation of the NYC Human Rights Law. The First Department suggested that there may be some legitimate exceptions to this broad interpretation of the marital status discrimination prohibition under the NYC Human Rights Law, but held that any such exceptions should be enacted by the City Council as a legislative amendment rather than by the courts. It remains to be seen if the City Council chooses to amend the NYC Human Rights Law to specify that the application of an anti-nepotism policy does not constitute marital status discrimination.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), [Kaveh Dabashi](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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