



## LABOR & EMPLOYMENT PRACTICE GROUP

*Meltzer Lippe is home to a large, experienced Labor and Employment Law Practice Group.*

*We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.*

*Exclusively representing management, our attorneys are indispensable advisors to senior executives and the HR team. While some business owners and companies rely on our experience and depth to supplement in-house general counsel expertise, others lean on us to resolve their labor disruptions or employ our tenacity in collective bargaining.*

## LOCATIONS

### Long Island

190 Willis Avenue  
Mineola, NY 11501  
516.774.0300

### New York City

70 East 55<sup>th</sup> Street  
New York, NY 10022  
212.201.1720

### Boca Raton

2500 N Military Trail  
Boca Raton, FL 33431  
561.989.1605

## New York Court of Appeals to Re-Visit Reach of the NYS and NYC Human Rights Laws

There is no question the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL) cover those who work and live in New York State (the “State”) and New York City (the “City”), respectively. Indeed, the language of the NYCHRL specifically affords its protections to New York City “inhabitants” and “persons in the City of New York,” N.Y.C. Admin. Code §§ 8-101, 8-104(1), and the NYSHRL protects “inhabitants” and persons “within” the State of New York, N.Y. Exec. Law §§ 290(2), (3).

Courts differ, however, in determining the territorial reach of the NYSHRL and NYCHRL with regard to non-residents who do not work in the State or City. Interpreting NYCHRL, some courts concluded it protected non-residents when the discriminatory decision was made in the City, while other courts held non-residents must only prove the discriminatory conduct had an “impact” within the City.

In 2010, New York’s highest court tackled the question of the jurisdictional reach of the City and State laws to non-residents in *Hoffman v. Parade Publications*, 15 N.Y.3d 285 (2010). Addressing the NYCHRL, the *Hoffman* Court held “the impact requirement is appropriate where a nonresident plaintiff invokes the protection of the City Human Rights Law.” *Id.* at 290. Likewise, with regard to the NYSHRL, the Court of Appeals concluded “a nonresident must plead and prove that the alleged discriminatory conduct had an impact in New York.” *Id.* at 291.

But that does address every scenario. What about the non-resident, who does not yet work in the State or City, who applies for a job in the State or City and is denied employment for discriminatory reasons? Does the NYSHRL or NYCHRL protect that person?

The United States Court of Appeals for the Second Circuit was recently presented with this issue in *Syeed v. Bloomberg L.P.*, 58 F.4th 64 (2d Cir. 2023): “Whether a nonresident plaintiff not yet employed in New York City or State satisfies the NYCHRL or NYSHRL impact requirement if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.” *Id.* at 67. In *Syeed*, the plaintiff worked in Bloomberg’s Washington D.C. bureau and applied for a job in its New York City office, but she was denied the position allegedly due to race and gender discrimination. *Id.* at 66-67. The plaintiff, now a California resident, filed a purported class action in New York state court alleging race and gender discrimination in violation of NYSHRL and NYCHRL, which Bloomberg removed to the United States District Court for the Southern District of New York. *Id.* at 67. Defendant moved to dismiss the complaint, which the District Court granted concluding plaintiff could not plead the requisite discriminatory impact in New York because she was not a State or City resident and worked in Washington D.C. at the time defendant denied her application. *Id.*

Plaintiff appealed to the Second Circuit Court of Appeals. Concluding that neither *Hoffman* nor any other State court had decided, or provided clear guidance on the issue, the Second Circuit *sua sponte* certified the question to the New York Court of Appeals. *Id.* at 67-71.

On February 9, 2023, the New York Court of Appeals accepted certification of the following question: “Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.” *Id.* at 71; *Syeed v. Bloomberg L.P.*, 39 N.Y.3d 1061 (2023). The appeal is scheduled to be fully briefed by the end of June 2023. While the Court has not yet set a date for argument, we anticipate a decision by end of the year or early 2024.

We are closely monitoring this case as it could dramatically expand State and City protections and expose New York employers who recruit non-residents (especially for remote positions) to additional potential liability. Employers with questions relative to the foregoing are encouraged to reach out to your Meltzer Lippe advisor or contact Mark A. Radi at Meltzer, Lippe, Goldstein & Breitstone, LLP.

©2023 Meltzer, Lippe, Goldstein & Breitstone, LLP. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Meltzer, Lippe, Goldstein & Breitstone, LLP and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions.