



Fox Rothschild LLP  
ATTORNEYS AT LAW

## **HRMA-PRINCETON LEGISLATIVE/LEGAL UPDATE** **September 12, 2016**

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### **Is Marital Status Protected Under the LAD?**

More specifically, does an employer run afoul of the LAD by firing a male employee because it anticipates him going through an ugly divorce with his co-worker wife?

Over the summer, the New Jersey Supreme Court concluded that the LAD, which includes a prohibition against marital status discrimination, not only makes it unlawful for employers to discriminate against employees because they are married or single, but also because they are separated, engaged, or seeking a divorce.

#### **Facts**

Robert Smith worked for the Millville Rescue Squad for 17 years, most recently as its Director of Operations. Mr. Smith's wife, Mary Smith, also worked for the Squad (as did Mary's mother and two sisters). In 2005, Mr. Smith had an affair with one of his subordinates. When Mrs. Smith learned about the affair, she reported it to his immediate supervisor, John Redden. Redden told Plaintiff that he could not promise the affair wouldn't impact Plaintiff's job, and that it "all depends on how it shakes down."

In early January 2006, Mr. Smith moved out of his home and informed Redden that his marriage had collapsed. On February 16, 2006, Redden told Mr. Smith that he did not think there was any chance Mr. Smith would reconcile with his wife, and that he expected an "ugly divorce." Redden also told Mr. Smith that because there was no chance of he and his wife reconciling, Redden would have to take the issue to the Squad's Board of Directors. Redden fired Mr. Smith the next day, ostensibly due to operational restructuring and poor performance.

#### **The Lawsuit**

Mr. Smith filed a lawsuit in which he claimed the Squad fired him because of his gender and marital status, in violation of the LAD. The trial court dismissed his claims. It found there was no evidence they fired Mr. Smith because he was single, married, separated or divorced, but rather because management was concerned his divorce was likely to become messy.

Mr. Smith appealed. The Appellate Division reversed the trial court's ruling. It interpreted "marital status," a term that is not defined in the LAD, to include being divorced, engaged, widowed, separated, or involved in divorce proceedings.

*The information provided here is general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this update, please do not hesitate to contact me.*

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## **The NJ Supreme Decision**

On June 21, 2016, the New Jersey Supreme Court affirmed the Appellate Division's broad interpretation of the term "marital status." In the process, it noted that the LAD permits employers to discipline or fire employees if their "personal life decisions, such as a marital separation or divorce, have disrupted the workplace or hindered the ability of the employee or others to do their job" (i.e., incivility, antagonism, lack of professionalism). However, the law prohibits employers from acting based on stereotypes, such as by assuming "an employee will be disruptive or ineffective simply because of life decisions such as a marriage or divorce."

The Court ultimately concluded that Mr. Smith had presented "direct evidence" of marital status discrimination, namely Redden's admission that he would not have spoken to the Board if he believed Mr. Smith might reconcile with his wife, and Redden's statement that he expected an "ugly divorce." The Court determined these statements revealed Redden's "reliance on stereotypes about the manner in which divorcing employees conduct themselves in the workplace."

## **Takeaways/Questions**

Be careful terminating an employee based upon issues surrounding a divorce; and be careful what you say, or put in e-mails regarding same.

Does the LAD prohibit anti-nepotism policies? What are your thoughts regarding anti-nepotism policies? Does this case change how you feel about them?