May 13, 2025

It's Not to Whom You Are Married — Second Circuit Limits Marital Status Protections Under NYC Law

On April 8, the U.S. Court of Appeals for the Second Circuit clarified the scope of marital status discrimination under the New York City Human Rights Law (NYCHRL). Specifically, in *Hunter v. Debmar-Mercury LLC*, the Court explained that marital status discrimination refers strictly to whether an individual is single, married, divorced, separated or widowed—not to whom that individual is or was married.

Background

In *Hunter*, the plaintiff was an executive producer for The Wendy Williams Show and married to the host, Wendy Williams. In April 2019, he was served with a notice that Wendy Williams was filing for divorce. A week later, his employment by the show was terminated. The plaintiff argued that his discharge constituted marital status discrimination under the NYCHRL because it was based on the particular person to whom he was married, an issue often raised in marital status discrimination cases and held to be actionable in at least one previous case interpreting the NYCHRL.

The Second Circuit rejected this argument, reaffirming that marital status discrimination focuses on an employee's general marital status rather than any bias against the particular person to whom the employee is married. The Court emphasized that an adverse employment action based on the *identity* of a spouse does not constitute marital status discrimination. The Second Circuit's ruling brought the interpretation of the NYCHRL into alignment with the interpretation of the marital status protections under the New York State Human Rights Law. It is noteworthy that the NYCHRL also provides protections for individuals based on caregiver and partnership status, but the Second Circuit's decision does not address the scope of these protections.

Key Takeaways:

- Although employers are prohibited from discriminating based on an individual's general marital status, an adverse employment action such as a termination of employment based on the particular person to whom an employee is married does not fall under marital status discrimination protections under New York City or State anti-discrimination laws. Marital status is not a protected classification under federal law.
- Despite the limitations of marital status protections, employers should be mindful that employment decisions based on the particular person to whom an employee is married still may be legally actionable under such theories as associational discrimination based on race, disability or other protected categories. For instance, employers should not terminate the employment of an employee with a disabled spouse due to concerns that the employee will miss work time to care for that spouse, or terminate the employment of an employee married to someone of a different race based on a bias against biracial marriages.

What Should Employers Do?

In general, employers should always ensure that their employment decisions are well documented and based on legitimate, non-discriminatory reasons, but this is especially so where personal relationships or perceptions could create the appearance

of illegal bias. Employers should also confer with employment counsel and review their policies and training materials to ensure that they comply with applicable law, including but not limited to the NYCHRL.

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