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## New York City Human Rights Law's Protections Extend Beyond the Big Apple

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The New York City Human Rights Law (NYCHRL) provides employees with among the most expansive protections from workplace discrimination of any legislation in the country. In certain respects, the NYCHRL requires plaintiffs to satisfy lower standards to establish claims than do other anti-discrimination laws. The NYCHRL also recognizes more protected characteristics than many other laws and enables prevailing plaintiffs to recover extensive damages. These are among the reasons that employers should take note of a recent decision by the U.S. Court of Appeals for the First Circuit in *Rinsky v. Cushman & Wakefield, Inc.*, 2019 WL 1091046 (1st Cir. Mar. 8, 2019), which illustrates the reach of the NYCHRL beyond the borders of New York City.

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### **The Facts**

In 1988, Yury Rinsky began working for Cushman & Wakefield, Inc. (the "Company"), a commercial real estate company based in New York City. Rinsky began his employment as a Senior Systems Analyst and later worked as a Software Engineer. He initially worked in the Company's New York City office but, starting in 2012, spent three or four days each week working remotely from his home in New Jersey or from Boston, where he worked while visiting his daughter. The rest of the week, he reported to the Company's New York City office. He received positive performance evaluations throughout his employment.

In December 2014, Rinsky and his wife purchased a house in Winchester, Massachusetts, where, according to Rinsky, they intended to retire in a few years. According to Rinsky, he asked and received permission from his supervisor to transfer to the Boston office. According to his supervisor, Rinsky did not request or receive such permission. In any event, Rinsky sold his home in New Jersey and began working remotely from his Winchester, Massachusetts, home. Meanwhile, the Company decided to terminate his employment for leaving the New York City office without notifying his manager or Human Resources.

On June 22, 2015, the Company directed Rinsky to either report to work at the New York City office five days a week beginning the next day or resign. Rinsky insisted that his transfer to Boston had been approved. On July 10, the Company terminated his employment. At that time, he was 63 years old. The Company replaced Rinsky with a 48-year-old employee.

### **The Lawsuit**

On January 15, 2016, Rinsky filed a lawsuit against the Company in Massachusetts Superior Court, asserting, among other claims, age discrimination under Massachusetts law. The Company removed the case to the U.S. District Court for the District of Massachusetts based on diversity jurisdiction. Before trial, the Court determined that New York law should apply to the claims and that Rinsky's allegations of discrimination should be decided under the NYCHRL.

Following a trial, the jury returned a verdict in Rinsky's favor on his age discrimination claim and awarded him compensatory damages of \$425,000 and punitive damages of \$850,000. The Company appealed.

### **The Appeal**

On appeal, the Company, among other things, challenged the justiciability of the NYCHRL claim, arguing that the law's protections did not apply to Rinsky, who worked and lived in Massachusetts – not New York City – at the time of his termination. According to the Company, the impact of the termination decision was not felt inside New York City and, therefore, the NYCHRL did not apply. The First Circuit rejected this argument.

The First Circuit noted that, according to the New York State Court of Appeals, when determining whether an employee can maintain a claim under the NYCHRL, “the question is whether the impact of an alleged discriminatory decision was felt within New York City.” This “impact requirement” means that individuals who work in New York City are covered but non-residents of the city are not necessarily excluded from coverage. In addition, the First Circuit observed that the fact that an alleged discriminatory decision was made in New York City is not, by itself, sufficient to support application of the NYCHRL, but may be a factor that courts consider.

The First Circuit concluded that the NYCHRL claim in this case was justiciable. The Court explained that “Rinsky’s residence in Massachusetts does not either preclude him from bringing a claim under the NYCHRL or support the conclusion that the impact of his termination was not felt in New York City.” According to the First Circuit, Rinsky’s remote work from Massachusetts was also not dispositive.

The Company argued that, in finding in favor of Rinsky, the jury necessarily believed that the Company had authorized him to transfer from New York to Massachusetts. At the time of his termination, therefore, he was no longer a New York City employee and could not maintain claims under the NYCHRL. The First Circuit rejected this argument, reasoning that the jury may have concluded that the Company did not authorize Rinsky’s transfer but led him to believe that it had done so in order to create a pretext to fire him after he moved. Under that view, Rinsky was employed in New York City at the time of his termination, even though he was working remotely from Massachusetts.

The First Circuit explained that courts are required to construe the NYCHRL liberally to accomplish the law’s broad and remedial goals. Thus, according to the First Circuit, “[i]t would create a significant loophole in the statutory protection that the New York Court of Appeals deemed was provided to non-resident employees ... if by the chicanery of misleading or lulling employees into working remotely from outside New York City before terminating them, an employer could immunize itself from liability.”

The First Circuit affirmed Rinsky’s judgment against the Company.

## **Conclusion**

In determining the applicability of the NYCHRL, an employee’s place of residence and even the place where the employee physically performs his or her work may not be dispositive. As the First Circuit’s decision in *Rinsky* makes clear, even someone who neither resides nor works in the city may be afforded the expansive protections of the NYCHRL.

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