<u>New York City Human Rights Law Training – June 19, 2012</u>

For convenience, here are citations of cases likely to be mentioned in the course of the training:

Albunio v. City of New York, 16 N.Y.3d 472, 922 N.Y.S.2d 244 (N.Y. 2011)

Bennett v. Health Management Systems, Inc., 92 A.D.3d 29, 936 N.Y.S.2d 112 (1st Dept. 2011), *lv. denied,* 18 N.Y.3d 811, ___ N.Y.S.2d ___ (N.Y. 2012)

DeGregorio v. Richmond Italian Pavillion, 90 A.D.3d 807, 935 N.Y.S.2d 70 (2nd Dept. 2011)

Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275 (U.S. 1998)

Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (N.Y. 2004)

Fufero v. St. John's University, 94 A.D.3d 695, 941 N.Y.S.2d 639 (2nd Dept. 2012)

Gross v. FBL Services, 129 S.Ct. 2343 (U.S. 2009)

Hoffman v. Parade Publications, 15 N.Y.3d 285, 907 N.Y.S.2d 145 (N.Y. 2010)

Levin v. Yeshiva Univ., 96 N.Y.2d 484, 730 N.Y.S.2d 15(N.Y. 2001)

Loeffler v. Staten Island University Hospital, 582 F.3d 268 (2nd Cir. 2009)

McGrath v. Toys "R" Us, Inc., 3 N.Y.3d 421, 788 N.Y.S.2d 281 (N.Y. 2004)

Mehlman v. Montefiore Medical Center, ___A.D. 3d ___, ___ N.Y.S.2d ___, 2012 WL 1913930 (1st Dept. May 29, 2012)

Phillips v. City of New York, 66 A.D.3d 170, 884 N.Y.S.2d 369 (1st Dept. 2009)

Priore v. New York Yankees, 307 A.D.2d 67, 761 N.Y.S.2d 608 (1st Dept. 2003)

Pugliese v. Long Island R.R. Co. 2006 WL 2689600 (E.D.N.Y. 2006)

Sotomayor v. City of New York, ___ F.Supp.2d ___, 2012 WL 18897780 (E.D.N.Y. 2012)

Weiss v. JP Morgan Chase, 2010 WL 114248 (S.D.N.Y. 2010)

Williams v. New York City Transit Authority, 61 A.D.3d 62, 872 N.Y.S.2d 27 (1st Dept. 2009), *lv. denied,* 13 N.Y.3d 702, 885 N.Y.S.2d 716 (N.Y. 2009)

Zakrzewska v. New School, 14 N.Y.3d 469, 902 N.Y.S.2d 838 (N.Y. 2010)

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Basic principles of the City HRL discussed in the training:

1. Every provision of the City HRL to be liberally construed in accordance with its "uniquely broad and remedial" purposes, regardless of how similar or identical federal or state provisions have been interpreted.

2. Every provision of the City HRL must be construed "broadly in favor of discrimination plaintiffs to the extent that such a construction is reasonably possible."

3. Cases that ignore either the need for independent, liberal construction or the distinct language of the City HRL are legislatively overruled, including, by way of illustration only, *McGrath, Levin* on marital status, *Forrest* (as it applies to the City law), and *Priore.*

4. Required element of analysis in each case: discrimination should not play a role in decisions made by employers, landlords and providers of public accommodations.

5. Required element of analysis in each case: traditional methods and principles of law enforcement ought to be applied in the civil rights context.

6. Required element of analysis in each case: victims of discrimination suffer serious injuries, for which they ought to receive full compensation.

7. Employers are strictly liable for acts of their managers and supervisors; there is no affirmative defense to liability in that circumstance (in housing and public accommodations contexts, employers are strictly liable for acts of all employees and agents).

8. There is a need to consider in every case the possibility that "mixed motive" analysis may apply.

9. On a summary judgment motion, where defendant has put forward evidence of one or more non-discriminatory motives, avoid going back to question of whether plaintiff has made out prima facie case.

10. If court does look at that question, the question is properly phrased as "Do the initial facts described by the plaintiff, *if not otherwise explained,* give rise to a *McDonnell Douglas* inference of discrimination?

11. The key question where a defendant has put forward evidence of non-discriminatory motivations, is: has defendant sufficiently met its burden as moving party of showing that, based upon the evidence before the court and drawing all reasonable inferences in plaintiff's favor, no jury could find defendant liable under *any* evidentiary route — *McDonnell Douglas*, mixed motive, "direct evidence, or some combination thereof.

12. If plaintiff produces evidence that at least one of the reasons proffered by defendant is false, misleading, or incomplete, that pretext evidence should *in almost every case* indicate to the court that a motion for summary judgment must be denied.

13. Sex harassment is a form of discrimination in the terms and conditions of employment.

14. In sexual harassment cases, questions of severity and pervasiveness are applicable to consideration of the amount of permissible damages, not to the question of liability.

15. Just as in other gender discrimination cases, the question is, "has the plaintiff been treated less well because of gender?"

16. An employer can avoid liability in what is contemplated to be a small subset of cases: those where it can prove that the conduct complained of consisted of nothing more than what a reasonable victim of discrimination would consider "petty slights and trivial inconveniences."

17. Retaliation "in any manner" is prohibited, and the retaliation need not result in an ultimate action or a material change in terms and conditions.

18. For non-material changes in terms and conditions and that is required is that the acts complained of "must be reasonably likely to deter a person from engaging in protected activity."

19. No type of retaliatory conduct may be categorically rejected as non-actionable; instead, all types must be made with a keen sense of workplace realities.

20. Not only the incidents that comprise harassment constitute a continuing violation; discrete incidents of discriminatory conduct that are part of a pattern also constitute a continuing violation.

21. Any medical, physical, mental, or psychological impairment constitutes a disability.

22. All accommodations that can help a person to perform a job or enjoy housing or a public accommodation — in whole or in part — are deemed reasonable except for those that a covered entity proves would cause it undue hardship.

23. The defendant also has the burden of proving that, even with accommodation, a plaintiff could not perform the essential requisites of a job or enjoy the housing or public accommodations in question.

24. The failure of a covered entity to engage in an interactive process to determine whether a reasonable accommodation can be made itself constitutes a failure to make reasonable accommodation.

25. The cost of an accommodation is to be borne by a covered entity unless it can prove that doing so would cause it undue hardship.

26. Non-residents of New York City can only avail themselves of the provisions of the City HRL if the impact of discriminatory conduct is felt in New York City (*i.e.,* only if they are working in New York City).

27. Disparate impact analysis is applicable to all protected classes and to all contexts of discrimination.

28. A plaintiff can show that a group of practices has a disparate impact without having to show the specific impact of each practice within the group alleged.

29. Defendant's burden is to prove that its challenged practice is justified as bearing a significant relationship to a significant business objective (or prove that one or more practices within a group of practices alleged to have a disparate impact do not contribute to that impact).

30. Most provisions of the Restoration Act are to be applied retroactively