

Employers Should be Certain that Discrimination Does Not Influence Adverse Employment Decisions

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Employers know that they must scrutinize their employment decisions in order to make sure no direct or indirect discrimination or bias taints them. A recently decided case emphasizes that such an analysis is crucial for employers to avoid legal liability for discrimination under the New Jersey Law Against Discrimination. In *Meade v. Township of Livingston*, the New Jersey Supreme Court ruled that Livingston Township's decision to terminate its female Township Manager was influenced by the gender bias of her subordinate, a male police chief.

Problems with the Police Chief

Based on the recommendation of counsel, the Township Manager wanted the Township Council to approve an investigation of the Police Chief in order to provide the support necessary to terminate him. She drafted a memorandum to the Township Council documenting the Police Chief's performance failures. These included delinquent work, failure to attend scheduled meetings with the Township Manager, failing to take disciplinary action against police officers when necessary, and failing to communicate the actions of the police department and Livingston's Emergency Services Unit (ESU) to the individuals and entities that needed to know. The latter resulted in the lock-down of a pre-school in Livingston that was unaware a camouflaged man carrying a rifle bag lurking outside the school was actually involved in a training exercise by the ESU. Prior to reaching out to the Township Council for support, the Township Manager provided the Police Chief with a memorandum documenting the above performance issues and requesting a response. The Police Chief never responded.

Township Council Recognizes Police Chief's Gender Bias

The Township Council was aware of the Police Chief's bias against women. At a Democratic Executive Committee meeting, a Township councilmember, in front of other councilmembers, stated "Michele [Meade] would not be having this problem if her name was Michael." Two of the four councilmembers who voted to terminate the Township Manager expressed the view that the chief refused to accept a woman as his supervisor, and one shared this view with the Township Council. Another councilmember, who was the mayor at the time, suggested to the Township Manager that the Police Chief report directly to him because he did not like reporting to a woman. Despite the above, the Township Council refused to authorize the Township Manager's request to mount an investigation against the Police Chief, as suggested by the Township attorney. Instead, the Township Council terminated the Township Manager, partly because she did not successfully discipline and terminate the Police Chief.

The New Jersey Supreme Court's Ruling

The New Jersey Supreme Court explained that a decision to take adverse action against an employee, such as termination, could be impermissible if the decision was influenced by a non-decision maker's discriminatory views. Here, the Township Council could be held to have decided to terminate the Township Manager because of the Police Chief's discriminatory attitudes toward women. The Court stated that an employer's actions taken

to “accommodate discriminatory views” can make an employer liable for discrimination to the same extent as if the employer personally held discriminatory views.

TAKEAWAY: Employers must ensure they are not influenced to make employment decisions by individuals who have discriminatory motives. If you are an employer and need help navigating employment decisions or the myriad of New Jersey and federal employment laws, contact [Stephanie Gironda](#) or another member of the Wilentz [Employment Law](#) Team.

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