



Is individual liability in Rhode Island a thing of the past? A look at what employers need to know.

By Jessica Schachter Jewell, Neal J. McNamara and Aaron F. Nadich

Rhode Island supervisors and managers can breathe a sigh of relief—the Rhode Island Supreme Court has finally weighed in on the question of whether individuals can be held liable under the Rhode Island Fair Employment Practices Act (FEPA). The answer: they cannot. Now, under both FEPA and Title VII, they need not fear individual liability. Although they might still be worried about liability under the Rhode Island Civil Rights Act (RICRA), there is a strong argument to be made that RICRA similarly does not provide for individual liability.

Mancini v. City of Providence et al.

The question

Sergeant Mark Mancini of the Providence Police Department filed suit against the City of Providence and Hugh Clements, Jr., the Chief of Police of the Providence Police Department, alleging that they illegally denied him a promotion to the position of Lieutenant. Chief Clements moved to dismiss the FEPA claim against him, arguing that FEPA, like its federal counterpart, does not provide for individual liability. Noting that the issue “has been considered by judges of this [c]ourt and the Rhode Island Superior Court for decades[,]” the United States District Court for the District of Rhode Island certified the question to the Rhode Island Supreme Court to get an answer to the age-old question once and for all.

The answer

Relying on statutory interpretation and the court’s interpretation of the General Assembly’s intent, the state’s high court held that FEPA does **not** provide for individual liability of an employee of a defendant employer. Although Sergeant Mancini—and other plaintiffs before and since him—have argued that the statute’s aiding and abetting language clearly provides for individual liability, the court disagreed that this was an open and shut case. Rather, the court remarked that the fact that courts within Rhode Island had interpreted it and came to opposite conclusions evidenced the statute’s ambiguity.

The court discarded the plaintiff’s focus on the statute’s reference to liability of “any person, whether or not an . . . employee” and stated that the court would not view it in isolation. Instead, the court looked to the relevant section as a whole and ultimately determined that to allow for

individual liability would require “contort[ing] the statutory language to an extent that would not be linguistically or jurisprudentially acceptable.” And, the court noted further that if the General Assembly had intended to impose individual liability, it would have done so using far clearer language than it had.

After reaching its conclusion, the court paused to note the practical implications of individual liability:

- It would have a chilling effect on supervisory employees’ discretionary decisions because they would make decisions in fear of lawsuits rather than based on the best interests of the employer. And, “a supervisor should not have to be concerned about keeping his or her house or car, or having enough wherewithal to pay for the education of his or her children when deciding, for example, between two employees who are candidates for the same promotion.”
- Aggrieved individuals already have sufficient recourse against the employer under FEPA.
- Imposing individual liability would create challenges as to which individual may be liable in the case of collective decision making.
- The remedies provided under FEPA—including a cease-and-desist order, hiring, reinstatement, upgrading of employees and admission or restoration to union membership—more clearly relate to the employer than the individual.

What about RICRA?

While supervisors and managers are in the clear with respect to causes of action under FEPA and Title VII, there remains the question of whether they might still be on the hook under RICRA. While there is not yet a definitive answer to this question, there is a forceful argument to be made that the answer to this question must be a resounding “no.”

First, the Rhode Island Supreme Court has made clear that even though FEPA and RICRA each incorporate some features that the other does not, the two statutes should be read in harmony when dealing with employment discrimination issues.¹ Therefore, the court’s decision in *Mancini* should inform the future interpretation of RICRA with respect to whether there is individual liability under that statute. In fact, Magistrate Judge Sullivan recently recognized as much when she stayed a case involving both FEPA and RICRA claims while the federal court awaited the Supreme Court’s decision in *Mancini*, noting that “[w]hile the certified question asks only for a statutory interpretation of FEPA, the response is overwhelmingly likely to be relevant to claims against individuals under RICRA.”²

But, of course, such a conclusion is not a sure thing. The Supreme Court relied heavily on the statutory language in reaching its conclusion in *Mancini*, and the language that it interpreted under FEPA does not exist under RICRA. Instead, RICRA focuses largely on the aggrieved party as opposed to the alleged wrongdoer. With differing statutory language, courts could interpret RICRA differently than the FEPA, but given courts’ willingness to consider them “analytically identical twins,” (*Reilly*), plus the practical considerations the court recognized in *Mancini*, it is likely that a

¹ See *Horn v. Southern Union Co.*

² See *Reilly v. Cox Enterprises, Inc.*

court will in the future similarly decide that there is no individual liability under RICRA in employment discrimination cases. One thing is clear: the *Mancini* decision will play a large role in the future interpretation of individual liability under RICRA, and we expect that to be the next question to be litigated in state or federal court.

For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

- Jessica Schachter Jewell at jsjewell@nixonpeabody.com or (401) 454-1046
 - Neal J. McNamara at nmcnamara@nixonpeabody.com or (401) 454-1019
 - Aaron Nadich at anadich@nixonpeabody.com or (401) 454-1044
-