

Employee can't sue supervisor under state statutes

By: [Eric T. Berkman](#) April 21, 2023

A Superior Court judge has determined that a supervisor could not face individual liability for discriminatory conduct in the workplace under either the Rhode Island Civil Rights Act or the Rhode Island Parent and Family Medical Leave Act.

Plaintiff Dominiqua Newkirk brought claims under both RICRA and RIPFMLA against her former employer, Pezzelli Nursing Home, which operated as Golden Crest Nursing Centre, and its president, defendant Paul Pezzelli, alleging that Pezzelli treated her differently from other employees because she is Black, and then fired her unlawfully when she tried to return from medical leave.

In his motion to dismiss, Pezzelli argued that he could not face individual liability under either statute.

Judge Kevin F. McHugh agreed.

Regarding RICRA, McHugh pointed out that the Rhode Island Supreme Court ruled in its 2007 *Horn v. Southern Union Co.* decision that the Rhode Island Fair Employment Practices Act, or RIFEPA, and the more recently enacted RICRA had to be read in harmony, before ruling in a 2017 decision, *Mancini v. City of Providence*, that RIFEPA did not allow for individual supervisor liability.



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— *Michael D. Chittick, Providence*

"To hold [that individual supervisors were subject to liability for discriminatory workplace conduct under RICRA] would provide 'plaintiffs an end run around' the Rhode Island Supreme Court's holding in *Mancini* declaring that individual liability does not exist under RIFEPA," McHugh wrote in granting the motion to dismiss.

McHugh similarly found that recognizing individual supervisor liability under RIPFMLA — which uses nearly identical language in defining an "employer" subject to liability as RIFEPA — would create a similar "end run around" for plaintiffs to go after supervisors in their personal capacity when they are legally prohibited from doing so under RIFEPA. Still, the judge ruled that the plaintiff's tortious interference claim brought individually against Pezzelli could proceed.

The 25-page decision is *Newkirk v. Pezzelli Nursing Home, Inc., et al.*, Lawyers Weekly No. 61-023-23. The full text of the ruling can be found [here](#).

1. 'Clarity and consistency'

Providence attorney Michael D. Chittick, who represented the defendants, said *Newkirk* is an important decision for the Rhode Island employment bar.

"We now have clarity and consistency on the issue of individual liability under Rhode Island's employment statutes: there is none," he said.

As a result, Chittick continued, “management personnel and human resources professionals can now sleep a bit easier knowing that they cannot be held personally liable for simply performing their jobs.”

Plaintiff’s counsel Vicki I. Bejma of Providence could not be reached for comment prior to deadline.

2. Discrimination suit

Newkirk worked at Golden Crest, a skilled nursing facility owned by Pezzelli Nursing Home, Inc., from 2013 to 2021.

During that time, Pezzelli served as administrator of Golden Crest and president of Pezzelli Nursing Home.

Newkirk alleged that during her employment with Golden Crest, Pezzelli treated Black employees differently than white employees.

On March 6, 2021, while still working for Golden Crest, Newkirk went to an urgent care clinic for chest and back pains and was told to take three days off from work and to follow up with her primary care doctor.

When she did so, her primary care physician apparently told her to take medical leave for one month.

According to Newkirk, she promptly submitted her leave documentation to Golden Crest before taking leave.

Newkirk v. Pezzelli Nursing Home, Inc., et al.

THE ISSUE: Could an individual supervisor face liability for discriminatory conduct in the workplace under either the Rhode Island Civil Rights Act or the Rhode Island Parent and Family Medical Leave Act?

DECISION: No (Providence Superior Court)

LAWYERS: Vicki I. Bejma of Robinson & Clapham, Providence (plaintiff)
Michael D. Chittick and Brendan F. Ryan, of Adler, Pollock & Sheehan, Providence (defense)

During her medical leave, Newkirk apparently learned that Pezzelli was telling co-workers that she would not be coming back to work.

Newkirk allegedly attempted to contact Pezzelli but never heard back. Additionally, the defendants allegedly posted her position online on or about March 21, 2021.

On June 4, 2021, Newkirk’s physician apparently cleared her to return to work the next day and provided a note reflecting that.

Aware of the need to receive permission to return, Newkirk claimed she immediately delivered her doctor’s note to her employer.

She also claimed she made several attempts to call management regarding her clearance to return but apparently did not hear back from anyone until June 8, when she received a letter from Golden Crest informing her she was terminated, purportedly for having used all her Family and Medical Leave Act time as of that day.

According to Newkirk, she was terminated at Pezzelli’s behest.

On July 14, 2022, Newkirk filed suit against the defendants in Superior Court, alleging a variety of state law claims, including violation of RIFEPA, RIPFMLA and RICRA. She specifically named Pezzelli as an individual defendant under RICRA and RIPFMLA. Newkirk further asserted that Pezzelli was liable for tortious interference with prospective contractual relations and economic advantage. The defendants moved to dismiss all claims, and McHugh held an oral argument on the motion in December 2022.

3. Lack of individual liability

In asserting that Pezzelli could not face individual liability under RICRA, the defendants emphasized that pursuant to Horn, RICRA and RIFEPA needed to be read in harmony, meaning that the inability to pursue individual liability under RIFEPA, as determined by Mancini, foreclosed individual liability under RICRA.

Newkirk countered that RICRA is a broader statute than RIFEPA and, as such, Mancini should not be read to bar RICRA claims against individual supervisors.

McHugh found the defendants' argument to be more persuasive.

The judge noted that RICRA was enacted to protect people from harassment or discrimination in all phases of employment rather than just in contract formation as under RIFEPA.

"In other words, the contextual history behind RICRA demonstrates it was adopted to ensure individuals subjected to employment discrimination could seek recourse at any phase during their employment, rather than to expand the scope of those who may be liable for discriminatory conduct in the workplace," McHugh wrote. "Clearly, the Court's holding in Horn mandates that Rhode Island courts treat RICRA and RIFEPA as in pari materia and make every attempt to harmonize the two statutory schemes."

Meanwhile, conceding that a U.S. District Court judge had determined in a 2010 case, *Mayale-Eke v. Merrill Lynch*, that there might be individual liability under RICRA, McHugh stated that *Mayale-Eke* is merely persuasive authority while Horn and Mancini are binding and thus carry more weight.

Turning to the issue of individual liability under RIPFMLA, McHugh acknowledged that neither Mancini nor Horn addressed that particular statute.

Still, he pointed to a 2011 Superior Court ruling, *Bringhurst v. Cardi's Department Store, Inc.*, to support the conclusion that RIPFMLA indeed did not provide for such liability.

In that case, Judge Kristen E. Rodgers stated that enabling individual liability under RIPFMLA while precluding it under RIFEPA would allow, for example, a human resources employee who signs a letter of termination or discipline to be routinely subjected to individual liability simply by signing their name — a situation Rodgers described as creating "an absurd result."

"The holding in *Bringhurst* is bolstered by our Supreme Court's holding in Mancini, as RIFEPA — the statutory scheme at issue in Mancini — utilizes nearly identical language for the definition for 'employer' as the one provided under RIPFMLA," McHugh said.

The judge further emphasized that the plaintiff could still seek recourse against the employer itself under each of the statutory schemes.

Accordingly, McHugh concluded, the individual statutory claims against Pezzelli should be dismissed.