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2023 Annual Update

Connecticut Municipal Employment Law

By Dennis M. Durao

I. WHERE WE STARTED

COMMISSION ON HUMAN RIGHTS & OPPORTUNITIES

- CHRO Case Statistics for its Fiscal Year (July 1, 2021 – June 30, 2022)
    - 1,581 employment discrimination claims filed (1,765 the prior year)
    - 91 claims based on religious accommodation requests for vaccination requirements (up from 50 the year before)
    - 69 cases were certified to the Office of Public Hearings (up from 62 the prior year)

II. WHERE WE HAVE BEEN AND ARE

SUMMARIES OF NOTABLE CASES IN 2023

- Groff v. DeJoy, 143 S. Ct. 2279 (2023) – **Religious Accommodations (non-vaccine-related)**

  - Facts:

    - Groff is an Evangelical Christian, who believes for religious reasons that Sundays should be devoted to worship and rest.

    - After a period, Groff's mail delivery job with the US Postal Service required Sunday deliveries; to avoid this, he transferred to a rural USPS station that did not make Sunday deliveries.

    - When that changed, Groff refused to make Sunday deliveries, his deliveries were reassigned to other workers, which resulted in Groff receiving progressive discipline until he resigned.

    - Groff brought a Title VII claim, alleging that USPS could have accommodated his Sunday Sabbath practice "**without undue hardship on the conduct of [USPS's] business.**" 42 U.S.C. § 2000e(j).

  - Issue Presented: What is the standard by which an employer establishes its "undue hardship" defense to a religious accommodation claim?

  - Analysis:

    - The Third Circuit concluded that it was bound by Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977) ("TWA"), which defined "undue hardship" to mean any effort or cost that is "more than … *de minimis*"; put differently, to require an employer to bear more than a *de minimis* cost in order to accommodate an employee is an undue hardship) (432 U.S. at 84).

- **HOLDING:** Title VII requires an employer to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.

    - For example: in this case, it is not enough for USPS to simply argue that requiring other workers to work overtime, increasing costs, would constitute and undue burden; the employer would have to consider other possible options, such as voluntary shift swaps.

    - The Court leaves it to the trial courts to apply the clarified standard in a common-sense manner.

- **TAKEAWAY: When faced with a religious accommodation request, an employer must identify reasonable accommodations (maybe not every conceivable accommodation, but certainly more than one) and conduct a detailed analysis to determine whether there would be a substantial increased cost in relation to the particular business (and with municipalities, there are numerous businesses (e.g., police and fire services, public works, etc.)).**

Notes:

- O'Reggio v. Comm'n on Human Rights & Opportunities, 219 Conn. App. 1 (2023) – **Definition of "Supervisor" for CFEPA Claims**

    - Facts: A Department of Labor employee brought hostile work environment claims based on her race and color pursuant to the CFEPA.

    - Procedural Posture:

        - CHRO human rights referee concluded, even though the plaintiff was subjected to a hostile work environment, the DOL acted promptly and reasonably to remedy the situation. The Superior Court affirmed, finding that the plaintiff has been subjected to a HWE, but the employee creating the hostile work environment was not the plaintiff's "supervisor." Since the CHRO only appealed re: imputing liability to the DOL (which only applies it the harasser is a supervisor), it affirmed the administrative decision.

    - Issue Presented: Does the definition of "supervisor" set forth in Vance v. Ball State University, 133 S. Ct. 2434 (2013), for hostile work environment claims brought under Title VII apply to the same claims brought under CFEPA?

    - Analysis:

        - The Supreme Court examines the federal Title VII framework for determining whether an employer can be held liable for a claim of the creation of a hostile work environment by its employees:

            - (1) If the employee who created the hostile work environment is the plaintiff's "supervisor," the employer will be vicariously liable, regardless of whether the harassment resulted in a "tangible employment action. This can only be avoided if the employer satisfies the Ellerth/Farragher defense.

- (2) If the employee is merely the plaintiff's "co-worker," the employer will be liable only if the plaintiff establishes that the employer was negligent in controlling the working conditions.

- Vance – "supervisor" is someone "empowered by the employer to take tangible employment actions against the [plaintiff] ...."

- Tangible employment actions result in a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

- The Supreme Court notes that the Vance "supervisor" definition has been applied to CFEPA claims by the Second Circuit Court of Appeals and the US District Court for the District of Conn.

- Courts look to federal precedent for guidance in interpreting CFEPA.

- No evidence that CT legislature intended for the term "supervisor" to be more broadly construed than the definition used by courts for Title VII purposes.

- **HELD:** definition of "supervisor," as set forth in Vance v. Ball state Univ., 133 S. Ct. 2434 (2013), is the proper definition for HWE claims brought under the CFEPA.

- **TAKEAWAY: The CFEPA and Title VII analyses for determining whether an individual is a "supervisor" or "coworker" for hostile work environment claims will be identical, which should provide greater clarity for risk assessment purposes.**

Notes:

- Hartford PD v. CHRO, 347 Conn. 241 (2023) – **Transferred Intent Theory**

  - Facts: Terminated probationary police officer brought discrimination claims on the basis of his Asian and Vietnamese ancestry under the CFEPA.

  - Procedural Posture:

    - The CHRO human rights referee found that Hartford had discriminated against the employee under either the mixed motive or pretext analytical models.

    - The Appellate Court reversed, including rejecting the employee's reliance on a transferred intent theory under state law as abrogated by the Supreme Court's decision in Staub v. Proctor Hospital, 562 U.S. 411, 415-16 (2011).

  - Issue Presented: Whether cat's paw theory announced in Staub replaced the transferred intent theory set forth in United Technologies Corp. v. Commission on Human Rights & Opportunities, 72 Conn. App. 212, cert. denied, 262 Conn. 920 (2002)?

  - Analysis:

    - The Supreme Court noted that a transfer of intent theory has long been used to establish the fourth prong of a plaintiff's prima facie case of discrimination → that is, whether the adverse employment action occurred under circumstances giving rise to an inference of discrimination and, specifically.

      - UTC - Companies may be held liable for discrimination even where the decision-making official did not intentionally discriminate if the information used by that official in deciding to terminate a worker's employment was filtered through another employee who had a discriminatory motive.

- Staub – the cat's paw theory refers to a situation in which a biased employee, who lacks decisionmaking power, influences the unbiased decisionmaker to make an adverse employment decision, thereby hiding the subordinate's discriminatory intent.

- The Supreme Court rejects the Appellate Court's claim that Staub has replaced the transferred intent theory of UTC, or that the two standards actually differ from each other.

- The Court acknowledges that it looks to federal law for guidance in interpreting the state's anti-discrimination statutes, as relied on O'Reggio in adopting Vance's "supervisor" definition for CFEPA, **but they are not bound by it**.

- The Court notes that the two standards are similar (not "loosely analogous"), with the only difference being that the cat's paw theory (Staub) requires that **the supervisor intend to cause an adverse employment action**; the Court did not decide whether that requirement applied to the Connecticut standard.

- **HELD:** There is no substantial difference between the transferred intent theories under state and federal decision law unless the intent requirement of Staub is not mandated by state law – an undecided issue.

- **TAKEAWAY: When defending CFEPA claims in which a plaintiff asserts the UTC transferred intent theory, the defense should argue that the theory requires proof of intent to cause an adverse employment action.**

Notes:

- CHRO v. Cantillon, 347 Conn. 58 (2023) – **Garden-Variety Emotional Distress Damages**

  - Facts: The complainant, Kelly Howard, filed a neighbor versus neighbor claim with the CHRO, alleging housing discrimination, in that her neighbor, Cantillon, had violated her civil rights on the basis of her race.

  - Procedural Posture:

    - After a default judgment entered against Cantillon and a hearing in damages, the presiding human rights referee found that the complainant had suffered emotional distress and awarded her $15,000 in damages, in addition to costs and postjudgment interest.

    - The CHRO appealed to the Superior Court, arguing that the award violated the law of Connecticut, as purportedly set forth in Patino v. Birken Mfg. Co., 304 Conn. 679 (2012) ($94,500 ED award), set a range for garden-variety emotional distress claims of between **$30,000 and $125,000**. The trial court affirmed the award, and the CHRO again appealed.

    - The Appellate Court similarly affirmed.

  - Issue Presented: Did the Supreme Court's decision in Patino establish that an award for garden-variety emotional distress damages under $30,000 is presumptively invalid?

  - Analysis:

    - The Supreme Court clarifies that the point of its reference, in a string citation, to a $30,000 to $125,000 jury verdicts for garden-variety emotional distress in Patino was simply that an award of damages that was squarely within the range of those that often are awarded in this part of the country will not shock the judicial conscience (the standard for remittitur in Connecticut).

- **HELD:** Patino did not set a presumptively valid verdict range for garden-variety emotional distress damage awards of $30,000 - $125,000.

    - P.S. – The Supreme Court noted its concern about whether the test presently used to assess emotional distress damages by the CHRO – the so-called Harrison test (from Harrison v. Greco, Docket No. 7930433 (CHRO July 3, 1985) – is a reasonable framework; however, this is not at issue before the Court and remains for another day.

- **TAKEAWAY: The $30,000 - $125,000 range for jury verdicts in Connecticut and the Second Circuit remains are reasonable guidepost in valuing claims, but it does not guarantee that an award in excess of $125,000 will be subject to remittitur. Any administrative appeal of an adverse emotional defense award after a public hearing should include challenging the method used to calculate such damages.**

Notes:

III. WHERE ARE WE GOING

TO TRIAL

- Connecticut Superior Courts' refusal to grant summary judgment motions will have an impact on settlement value determinations, as the marked increase in trial exposed cases necessarily requires either more settlements and/or more trials (and potentially adverse jury verdicts).

Notes: