

Kira D. Flint : Office of Public Hearings
v. :
Eastern Community Development Corp. : OPH/WBR No. 2010-128
: April 19, 2010

Ruling re: the respondent's motion to dismiss the complaint

Procedural history

On March 2, 2010, the complainant, Kira D. Flint, filed a complaint with the chief human rights referee alleging that the respondent, Eastern Community Development Corp, her former employer, violated General Statutes § 4-61dd¹ when it terminated her employment on December 23, 2009 in retaliation for her protected disclosure of information, often referred to as “whistleblowing”.² On March 18, 2010, the respondent filed its answer to the complaint denying that it had violated § 4-61dd; and, on March 23, 2010, Ms. Flint filed an amendment to her complaint. On April 1, 2010, the respondent filed a motion to dismiss (motion) the complaint. Ms. Flint filed her objection to the motion (objection) on April 7, 2010.³

For the reasons set forth herein, the motion is granted and the complaint is dismissed.

Analysis

I

According to the complaint and amendment, the respondent, a group home, hired the complainant on July 1, 2009. Ms. Flint was instructed by one of the

respondent's managers to "keep tabs" on another manager and on other employees. In July 2009, she reported a co-worker for drinking on the job. He was subsequently discharged. In November 2009, she reported to the respondent and to the state's abuse hotline that a co-worker was exhibiting inappropriate conduct toward a resident of the group home. She also reported understaffing at the facility. She was subsequently discharged on December 23, 2009.

In its motion, the respondent asserted, inter alia, that the complaint was time-barred as it was not filed within thirty days of Ms. Flint's termination. In her objection, Ms. Flint argued that the complaint should not be considered untimely because she had contacted the Equal Employment Opportunity Commission (EEOC) on January 4, 2010 and was scheduled for an appointment on February 26, 2010. At that appointment, she was instructed by the EEOC interviewer to file a whistleblower retaliation complaint, which was the first time she became aware that she might have a whistleblower retaliation claim under § 4-61dd. She then properly filed her complaint with the chief human rights referee. Ms. Flint further argued that there is no "handbook" for someone to consult as to who to contact when whistleblowing.

II

Section 4-61dd (b) (3) (A) provides in relevant part: "Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the

employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57.” In this case, the specific personnel action that Ms. Flint incurred was her termination on December 23, 2009. She did not file her complaint with the chief human rights referee, though, until March 2, 2010, which is more than thirty days after her termination.

The thirty-day statute of limitations for the filing of a whistleblower retaliation complaint can be extended only in the very limited circumstances where the complainant can prove that the doctrines of waiver, consent or equitable tolling apply. *Taylor v Office of Public Hearings*, judicial district of New Britain, Docket No. CV-09-4019897 (October 6, 2009) (2009 WL 57777929). Under the doctrine of equitable tolling, the deadline could be extended if a complainant can demonstrate that extraordinary circumstances prevented her from filing on time. *Beecher v. Dep't of Transportation*, OPH/WBR 2008-078, Motion to dismiss, p. 7 (January 7, 2009) (2009 WL 281167). Also, the respondent could be estopped from raising a defense that a complaint was untimely if a complainant could show that she knew of her cause of action but the respondent “either has misrepresented the length of the limitations period or has in some way lulled the claimant into believing that litigation was unnecessary at that time. . . . An affirmative act or statement on the part of the other party, rather than mere silence, is a necessary component of the doctrine. . . . To succeed in this argument, the claimant must show that the party sought to be estopped from raising a defense of ‘untimeliness’ acted with the specific intent of thwarting a timely complaint

and that, in turn, the claimant acted in reliance thereupon to [her] own detriment. . . .” (Citations omitted.) *Beecher v. Dep’t of Transportation*, OPH/WBR 2008-078, Motion to dismiss, p. 6 (January 7, 2009) (2009 WL 281167).

In this case, Ms. Flint offered no evidence that the respondent waived the statute of limitations, consented to the late filing of the complaint or took any action to deter her from filing her complaint on time. Also, her lack of awareness of the law and the complaint procedure is not the type of “extraordinary circumstance” that excuses the late filing. *Taylor v Office of Public Hearings*, supra, 2009 WL 57777929.

III

The complaint is dismissed because it was not filed within thirty days of the complainant’s termination and because there is no evidence that would toll the filing deadline.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
Ms. Kira D. Flint
Timothy F. Murphy, Esq.

¹ General Statutes § 4-61dd provides:

- (a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any

matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed;

(C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not

later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

² In her complaint, the complainant alleged that the respondent was a state agency. On March 25, 2009, the complainant's motion to amend her complaint to allege that the respondent was, instead, a large state contractor was granted.

³ In her complaint and objection, the complainant appears to allege incidents of sexual harassment by the respondent. If the complainant believes that she has been the victim of sexual harassment or the victim of retaliation for opposing sexual harassment, in violation of General Statutes § 46a-60 (a), she may wish to consider contacting the Norwich office of the Commission on Human Rights and Opportunities to file a discrimination complaint.