

**STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS**

CHRO ex rel. Barbara DuBois,  
Complainant  
v.  
Maharam Fabric Corp.,  
Respondent

CHRO Nos. 0920414, 1120319

07-09-13 A09:53 IN



**Ruling on Motion to Dismiss<sup>1</sup>**

The consolidated affidavits of illegal discriminatory conduct (affidavit) filed in Commission on Human Rights and Opportunities (CHRO) case numbers 0920414 and 1120319 contain allegations of age discrimination based on both Conn. Gen. Stat. section 46a-60(a)(1) and the Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA), as amended, as enforced through Conn. Gen. Stat. section 46a-58(a). The Respondent filed a motion to dismiss, on October 1, 2012, that seeks, in part, to dismiss claims of age discrimination based on Conn. Gen. Stat. section 46a-58(a).<sup>2</sup> For the following reasons, the motion to dismiss the section 46a-58(a) claim is granted.

Complainant argues the Respondent's motion should be denied. Complainant reasons that because the state CHRO and the federal Equal Employment Opportunities Commission (EEOC) have entered into a Work Sharing Agreement (WSA) to receive and process discriminatory employment practice complaints, CHRO's and the Office of Public Hearings' (OPH) jurisdiction expanded to include the enforcement of federal employment discrimination laws.<sup>3</sup> The Complainant misconstrues the terms of the WSA.

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<sup>1</sup> On November 28, 2012, the undersigned granted CHRO's motion to stay the issuance of a decision on the instant motion to dismiss in response to the Complainant's Petition for Declaratory Ruling, dated November 1, 2012, filed with the CHRO. On April 10, 2013, the CHRO issued its ruling regarding the definition of employer.

<sup>2</sup> Subsection (a) of Sec. 46a-58 states, " It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability."

<sup>3</sup> Exhibit B to Complainant's Memorandum in Opposition to the Motion to Dismiss is a copy of the Worksharing Agreement Between Connecticut Commission on Human Rights & Opportunities and the U.S. Equal Employment Opportunity Commission, New York District Office, for Fiscal Year 2010 (WSA 2010). It is a 5 page document that was executed on October 2, 2009. (The EEOC's State and Local Handbook, referenced in the section V.A. of the WSA 2010 was not provided.) Attached to the WSA 2010 is a 10 page document that purports to amend an unspecified and unattached contract between the CHRO and the EEOC. Page 1 of 10 of this attachment incorporates by reference a Worksharing

Consistent with provisions of Title VII, the ADEA, and other federal unfair employment laws, the WSA recognizes the common subject matter jurisdiction and goals of the CHRO and the EEOC. WSA 2010, subsection A of section I – Introduction. The agreement then designates each respective Agency to be the agent for the other “for the purpose of receiving and drafting charges, including those that are not jurisdictional with the agency that initially receives the charges.” WSA 2010, subsection A of section II – Filing of Charges of Discrimination (emphasis added). It then notes that “[t]his delegation of authority to receive charges does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge.” Id (emphasis added).

In the context of the WSA relationship, the underlying federal laws recognize that a state may have its own statutory prohibitions against discriminatory employment practices. Title VII and the ADEA both require that before a charge may be filed with the EEOC, a complainant first must file with the state or local agency authorized by law to receive and process the complaint and to grant or seek relief. (See Title VII, sections 706(c), 706(d) and 706(e)<sup>4</sup> and section 633 of the ADEA.<sup>5</sup>) Such complaints are filed under the laws of the respective state or local jurisdiction.

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Agreement dated March, 1, 2012. Attached to the 10 page attachment is the “FY 2012 Extension of Worksharing Agreement,” executed March 1, 2012 (WSA Ext. 2012).

<sup>4</sup> Section 706 of Title VII, states in relevant part –

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings -- In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law....

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission -- In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system -- (1) A charge under this section shall be filed

Assuming, arguendo, that Complainant's interpretation of the WSA is correct, the legal authority of CHRO and OPH would thereby increase without action by the state legislature. Neither CHRO nor OPH can enter into a contract to expand its jurisdiction.

The Respondent argues that neither CHRO nor OPH possess jurisdiction to enforce Title VII or the ADEA claims because under federal law only courts may do so.<sup>6</sup> Assuming, arguendo, that Respondent is correct, clearly federal law does not preclude states from adopting laws to protect against employment discrimination.<sup>7</sup> If a state legislature, including Connecticut's, adopts laws similar or identical to the terms of Title VII or the ADEA, federal law would not preempt those laws. Both Title VII and the ADEA recognize this and place restrictions on the filing of charges with the EEOC once an individual has filed a discrimination complaint with state authorities pursuant to applicable state law. (See supra footnotes 3 and 4.)

In fact, section 46a-60 is substantially similar to Title VII, the ADEA, and other federal employment discrimination provisions in many aspects – although section 46a-60

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within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

<sup>5</sup> Section 633 of the ADEA states, in relevant part --

(a) Federal action superseding State action -- Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings --In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title ... before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law....

<sup>6</sup> Complainant has not alleged a violation of Title VII.

<sup>7</sup> Title VII does, however, prohibit state laws that purport to require or permit the doing of any act made illegal under Title VII. See Title VII, Section 708.

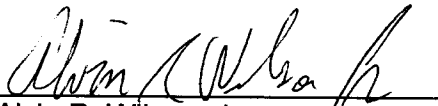
contains more protected classes than does federal law. Furthermore, section 46a-58(a) has been construed to transform the provisions of federal employment discrimination law into Connecticut law for the protected classes listed in that subsection – religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability – to the extent that federal protection exists for these specified classes. See Trimachi v. Conn. Workers Comp. Comm., 2000 WL 872451 (Conn. Supr. Ct., June 14, 2000).

Notably, age is not one of the protected classes listed in section 46a-58(a). Therefore, because section 46a-58(a) does not include age, the provisions of the ADEA are not transmuted into section 46a-58(a). See CHRO ex rel. Patricia Robinson v. State of Conn., Dept. of Mental Health and Addition Services, CHRO No. 0630292 (Ruling on Motion to Dismiss, dated March 26, 2008) (citing Poeta-Tisi v. Griffin Hospital, 2006 WL 1494078, \*8 (Conn. Super.); CHRO ex rel. Ramseur v. Colonial Chimney and Masonry, Inc., 2005 WL 4828677 (CHRO No. 0440130, November 28, 2005); and CHRO ex rel. Crebase v. Procter & Gamble Pharmaceuticals, Inc., 2006 WL 4844064 (CHRO No. 0330171, July 12, 2006).

Under existing state law, the only available age discrimination law that a Human Rights Referee (HRR) is authorized to enforce is a claim made pursuant to Conn. Gen. Stat. Section 46a-60(a). To the extent the Complainant's consolidated affidavits seek to assert a claim for age discrimination pursuant to a section other than section 46a-60, the claim is dismissed.

So ordered.

Dated this 3d day of July 2013

  
Alvin R. Wilson, Jr.  
Presiding Human Rights Referee

cc:

George F. Brenlla, Esq. – via fax only  
David M. Cohen, Esq.-via fax only  
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