STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

DECLARATORY RULING ON THE PETITION OF BARBARA DuBOIS

I. INTRODUCTION

On November 1, 2012, the Commission on Human Rights and Opportunities (hereinafter "CHRO" or "the Commission") received a properly filed petition for a declaratory ruling from Barbara DuBois (hereinafter "DuBois" or "Petitioner"). Under the authority of Connecticut General Statutes § 4-176 and Connecticut Agencies Regulations § 46a-54-122, the Petitioner seeks a ruling from the CHRO as to the definition of "employer" under the Fair Employment Practices Act.

On December 5, 2012, the Commission, through its Executive Director, sent Maharam Fabric Corporation (hereinafter "Maharam") a letter informing it of DuBois's petition and inviting it to submit a request to intervene or to become a party to this petition. On December 10, 2012 Maharam sent a letter and supporting brief to the Commission stating that it wished to intervene in this matter. Maharam's request to intervene was granted on December 12, 2012.

At its regularly scheduled meeting on December 12, 2012, the CHRO Commissioners voted to issue a declaratory ruling on the issue presented. By letter, the CHRO notified the Petitioner of the Commission's decision to issue a declaratory ruling and invited submission of further arguments, documents or other supplemental supporting materials. On January 15, 2013 the CHRO published a notice in the Connecticut Law Journal inviting any interested parties to apply for intervener status and/or to submit any written arguments and/or supporting documents in regards to the declaratory ruling.

The Petitioner submitted written comments in response to the Commission's invitation. On March 4, 2013 the Connecticut Employment Lawyers Association (hereinafter "CELA") submitted written comments for the CHRO's consideration. To date, only the Petitioner, Maharam and CELA have submitted any materials or arguments relevant to this declaratory ruling.

II. FACTS PRESENTED

For the purpose of this ruling, we will limit our review of the facts to those reported by the Petitioner and/or Maharam that are directly relevant to the issue to be decided.

The Petitioner was employed as a sales representative for the intervener, Maharam Fabric Corporation. Maharam is a manufacturer and distributer of textiles and it is headquartered in New York with locations throughout the United States and abroad. Maharam employs approximately 200 people in its various locations. DuBois was employed by Maharam for 24 years prior to her termination in March 2009. At the time of her termination, she was the only employee in Connecticut.

III. PARTIES

The parties to this declaratory proceeding are:

Ms. Barbara DuBois
47 Sound View Drive
Greenwich, CT 06830

Maharam Fabric Corporation
45 Rasons Court
Hauppauge, NY 11788

IV. ANALYSIS OF THE ISSUES PRESENTED BY DUBOIS' PETITION FOR A DECLARATORY RULING

A. Introduction

This declaratory ruling addresses the following issue:

1. Whether CONN. GEN. STAT. §46a-51(10) requires an employer to employ at least three individuals **working in Connecticut** in order to qualify as an employer under that statute.

B. Applicable Law

Connecticut General Statutes § 4-176 provides that an agency may issue a declaratory ruling regarding the "the applicability to specified circumstances of a provision of the general statutes." Therefore, it is first necessary to review the statutory provisions that may apply to the question presented by this request for a declaratory ruling.

The Connecticut Fair Employment Practices Act (hereinafter "CFEPA") (**encompasses** the statutory provisions governing the state's employment discrimination laws. In order to be jurisdictional under those statutes an entity must be a covered "employer." Connecticut General Statutes §46a-51(10) includes in its the definition of the word "employer", "the state and all political subdivisions thereof and means any person or employer with three or more persons in such person's or employer's employ." There is no qualifying word and/or statement in the statute that conditions where the three employees must be located.

C. Position of the Parties

The Petitioner argues that nothing in Conn. Gen. Stat. §46a-51(10) requires that the three employees be located within the state in order for an entity to qualify as an employer under that statute. She further points to the Equal Employment Opportunity

Commission's[1] (hereinafter "EEOC") Compliance Manual which directs the agency to count the "number of employees on an employer's payroll," to determine whether an entity is considered an employer for purposes of the law. In making this determination the EEOC counts all employees, regardless of which state they work in, toward the number of employees that qualifies an entity as an employer.

The Petitioner notes that there is no regulation, hearing officer decision, statute or Connecticut Court decision regarding the interpretation of Conn. Gen. Stat. §46a-51(10).

Maharam, in opposition to the Petitioner's argument, relies heavily on the case Velez v. Commission of the Department of Labor, 306 Conn. 475 (2012), to support its argument that an entity must have three or more employees **in Connecticut**. In Velez, the court focused on the state's Family and Medical Leave Act, Conn. Gen. Stat. §31-51kk et seq. (hereinafter "FMLA") which is regulated by the State of Connecticut's Department of Labor's (hereinafter "DOL"). In the definition section of the state's FMLA, Conn. Gen. Stat. § 31-51kk(4), an employer is defined as:

> (4) "Employer" means a person engaged in any activity, enterprise or business who employs seventy-five or more employees, and includes any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer and any successor in interest of an employer, but shall not include the state, a municipality, a local or regional board of education, or a private or parochial elementary or secondary school. The number of employees of an employer shall be determined on October first annually;

DOL regulation further defines who is counted as an employee under its regulations found at Sec. 31-51qq-42 which state:

[1] The EEOC is the CHRO's federal counterpart.

> In order to determine which employers may have employed a sufficient number of employees as of October first of the previous year to be covered under the Act, the Commissioner may rely upon data contained in the Employee Quarterly Earnings Report required pursuant to Section 31-225a(j) of the General Statutes (Chapter 567-Unemployment Compensation) for the third quarter of the prior calendar year.

The court in Velez interpreted the above language to mean that only employees working in Connecticut should be counted for purposes of determining whether the state's FMLA requirements applied to a given employer. The Employee Quarterly Earnings Report, discussed in the DOL regulation included only employees in Connecticut. Velez at 491. Since the DOL consistently interpreted its statute and regulations to mean the 75 employees had to be in Connecticut, the court gave great deference to DOL and sustained the agency's interpretation of its statute. Further, the court gave deference to the agency's regulation which spoke specifically to the issue because the regulations had gone through "legislative oversight through the legislative regulation review committee prior to approval of the regulations." Velez at 875.

The Petitioner distinguishes Velez from the issue presented in this case by noting that CONN. GEN. STAT. §46a-51(10) does not reference where employees must be located in order to qualify under our statute. Further, there is no regulation that speaks to this issue. The Petitioner therefore surmises that under Conn. Gen. Stat. §46a-51(10) the definition of an employer counts all of employees in an organization, regardless of whether they are located in Connecticut.

In stark contrast, Maharam argues that Velez is squarely on point and the requirement that the employees must live in Connecticut is also applicable to the CHRO statutory scheme. Maharam argues that Velez requires that we only count employees

of a company that are located in Connecticut to determine whether an entity is an employer under Conn. Gen. Stat. § 46a-51(10).

C. Analysis

The CHRO is charged with "dual functions: to carry out the antidiscriminatory purposes of the statutory scheme *and* to protect and to vindicate the rights of those discriminated against." Comm'n on Human Rights & Opportunities v. Litchfield Hous. Auth., 117 Conn. App. 30, 49 citing to Williams v. Commission on Human Rights & Opportunities, 257 Conn. 258, 266, 777 A.2d 645 (2001). Accordingly, the role of the CHRO is to ensure that employees in the state are able to exercise their rights to non--discriminatory work places by filing complaints of discrimination at the CHRO. In Comm'n on Human Rights & Opportunities v. Truelove & Maclean, Inc., 238 Conn. 337, 355 (1996) the court noted, "As part of title 46a, the Connecticut Fair Employment Practices Act (act); General Statutes § 46a–51 et seq.; was enacted to eliminate discriminatory practices from the workplace. As such, the act is composed of remedial statutes, which are to "be construed liberally to effectuate their beneficent purposes." Id. at 355.

As noted above, the definition of employer under Conn. Gen. Stat. § 46a-51(10) includes, "the state and all political subdivisions thereof and means any person or employer with three or more persons in such person's or employer's employ." When determining the meaning of a statute, we look to Conn. Gen. Stat. §1-2z, which directs parties to interpret the plain meaning of the statute. Conn. Gen. Stat. §1-2z states:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of

such test is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

The Supreme Court further explains the plain meanings statute, "[i]n seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Lyon v. Jones, 291 Conn. 384, 396 (2009). Accordingly, we agree with the Petitioner's interpretation of the statute. The plain meaning of Conn. Gen. Stat. §46a-51(10) mandates the inclusion of employers who employ three or more employees, regardless of whether they are working in Connecticut. There is no language in the statute or any related regulation which mandates that those employees must be employed in the state.

Public policy supports this interpretation as well. The Velez court explained that the FMLA was enacted to "balance the demands of the work-place with the needs of families . . . [and] to entitle employees to take reasonable leave for medical reasons...in a manner that accommodates the legitimate interests of employers" citing Hackworth v. Progressive Casualty Co., 468 F. 3d 722, 727-28 (10th Cir. 2006). In other words, the statute was not only designed to benefit the employee by giving them time off they might not otherwise be entitled but to balance that benefit with the interest of the employer to run its business in an efficient manner. FMLA is a different species than CFEPA. Our anti-discrimination laws mandate that employees are treated equally, rather than given some specific benefit. CFEPA's statutes are interpreted broadly in

light of the remedial purposes underlying these laws. See, e.g., *Thibodeau v. Design Group One Architects, LLC*, 260 Conn. 691, 709, (2002). "The important and salutary public policy expressed in the antidiscrimination provisions of [§46a–60(a)(1)] cannot be overstated". Thibodeau at 709. Therefore, public policy in interpreting these remedial statutes would dictate not writing in a limitation to CFEPA which does not plainly exist.

V. CONCLUSION

CONN. GEN. STAT. §46a-51(10) includes employers who have three or more employees, regardless of whether they are working in Connecticut. However, one employee must work in Connecticut.

ADOPTED BY A MAJORITY VOTE OF THE COMMISSIONERS PRESENT AND VOTING AT A COMMISSION MEETING HELD ON April 10, 2013 IN HARTFORD, CONNECTICUT.

Attest: _____
Andrew M. Norton, Chairman
Or duly authorized Commissioner

Date: April 10, 2013