

STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and  
Opportunities ex rel. Lourdes Morales,  
Complainant

CHRO No. 1110162

v.

Trinity College,

February 4, 2013

Ruling on Respondent's Motion to Dismiss

I. PRELIMINARY STATEMENT

Complainant, Lourdes Morales, filed a complaint against Trinity College on October 28, 2010, alleging that she was discriminated against based on her gender and subjected to unequal terms and conditions of employment. Complainant alleged that she was suspended for three days on or about October 27, 2009 for failing to answer her pager. However, she further alleged that a male co-worker was not suspended for failure to answer his pager a year later. Additionally on May 6, 2010, she and another female coworker Cate Woulfe, also an Access Control Technician/Locksmith (technician) like herself, were allegedly denied training by a vendor, whereas the male technician received training. Lastly, the complainant alleged that on or about May or June 2010, she was denied permission to leave early for an appointment, however her male co-worker was allowed to change his schedule by coming into work a half hour early on occasions. No specific dates or examples were given regarding the male coworker's change in schedule. Complainant requested, as part of her relief, that she be paid for the three days she was suspended.

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On January 4, 2013 respondent, Trinity College, filed a motion to dismiss based on mootness as the complainant is no longer employed by the respondent. The respondent asserted that the 2009 suspension is untimely and that the Office of Public Hearings may not award emotional distress damages. For reason more fully set forth below, the respondent's Motion to Dismiss is partially **GRANTED** and partially **DENIED**. It is **GRANTED** with regard to the one claim concerning complainant's 3-day suspension as it is outside the applicable 180-day filing period. Pursuant to General Statute §46a-82(f) such claim is untimely. The remaining claims are viable and justiciable therefore; with regard to the remainder of complainant's claims, the respondent's Motion to Dismiss is **DENIED**.

## II. LEGAL STANDARD

"A motion to dismiss admits facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. A ruling on a motion to dismiss is neither a ruling on the merits of the action ... nor a test of whether the complaint states a cause of action. .... Motions to dismiss are granted solely on jurisdictional grounds. (Citations omitted; internal quotation marks omitted.) *Malasky v. Metal Products Corporation*, 44 Conn. App. 446, 451-52 (1997). "[E]very presumption is to be indulged in favor of jurisdiction. In ruling upon a motion to dismiss, the complaint is to be construed most favorably to the plaintiff." (Citations omitted; internal quotation marks omitted.) *Lunenburg v. Mystic Dental Group*, 1996 Conn. Super. LEXIS 2001, 5.

Section 4-61dd-15c(1) and (2) of the Regulations of Connecticut State Agencies provide in pertinent part that "the presiding officer may, on his own or upon motion by a party, dismiss a complaint...if the complainant fails to establish jurisdiction or (2) fails to state a claim for which relief can be granted". It is equally clear that an administrative agency should be given the opportunity to rule on its subject matter jurisdiction. *Greater Bridgeport Transit District v. Local Union 1336*, 211 Conn. 436, 439 (1989), and that "when the subject matter jurisdiction of the adjudicatory body is challenged, cognizance of it must be taken and the matter passed on before it can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction". *Baldwin Piano & Organ Co. v. Blake*, 186 Conn. 295, 297.

### III. LAW AND ANALYSIS

#### A. EQUITABLE TOLLING OF THE STATUTORY FILING PERIOD

General Statutes § 46a-82(e) requires that any complaint of discrimination must be filed within 180 days of the alleged act of discrimination. The respondent argued that failing to file a discrimination complaint within this prescribed period deprives this tribunal of subject matter jurisdiction. This statutory filing period has, however, been found not to be jurisdictional but comparable to a statute of limitations and subject to waiver and equitable tolling. *Williams v. Commission on Human Rights and Opportunities*, 257 Conn. 258, 277 (2001). This determination is not limited to this state's courts. It is also found in decisions of the United States Supreme Court in addressing the time filing requirement under the federal counterparts to our state's discrimination laws. "The time period for filing a charge is subject to equitable doctrines

such as tolling or estoppel. *National Railroad Passengers Corp. v. Morgan*, 536 U.S. 101, 113 (2002). The filing of a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit... but a requirement that, like a statute of limitations, is subject to waiver, estoppel and equitable tolling." *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982)

"In addition to the equitable doctrines of waiver, equitable tolling and estoppels, the continuing violation theory has been used as a mechanism to extend the filing period so as to bring into the charging period discrete acts or acts that if standing alone would be untimely provided one of the acts occurred in the filing period. *Quinn v. Green Tree Credit Corp.*, 159 F.3d 259, 765 (2nd Cir. 1998). Examples of separate and actionable acts are failure to promote, denial of transfer and a retaliatory adverse employment decision. *National Railroad Passengers Corp. v. Morgan*, supra at 114.

The *National Railroad* decision however, constrained the use of the continuing violation theory. According to this decision (along with the myriad federal and Connecticut cases following *Morgan*), under Title VII, each discrete act of discrimination or retaliation constitutes a separate actionable incident. An employee cannot proceed on claims based on discrete acts occurring beyond the appropriate time period, even if they are related to acts alleged in a timely manner ... [Id 113-14]; see also *Patterson v. County of Onieda*, 375 F3d 206, 220 (2nd Cir. 2004) (Title VII precludes recovery for discrete acts of discrimination that occurred outside of the statutory period, even if other related acts occurred within the time period); *Commission on Human Rights and Opportunities ex rel. Magda v. Diego North America, Inc.*, 2006 WL 2965493 (CT Civ.

Rts.) Discrete acts that fall within the statutory time period do not make timely acts that fall outside the time period; *National Railroad v. Morgan*, supra at 112. "One exception to this tenet ... may occur in a situation involving a hostile work environment. *Darling v. Potter*, 2005 WL 2045951. *Samson v. State of Connecticut*, Department of Public Safety, 2008 WL 2683294." Id. (Internal quotation marks omitted.)

"Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable unlawful employment practice." *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 706, n. 12 (2006) (quoting *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 114-15 (2002)). "[A]s a general rule, 'discrete discriminatory acts are not actionable if time barred, even when they relate to acts alleged in timely filed charges. Each discriminatory act starts a new clock for filing charges alleging that act.'" *Tosado v. Connecticut*, 2007 WL 969392, 33 (quoting *National Railroad Passenger Corp. v. Morgan*, supra, 536 U.S. 113.) (internal citations omitted.) "The charge, therefore, must be filed within the [statutory] time period after the discrete discriminatory act occurred." *National Railroad Passenger Corp. v. Morgan*, supra, 536 U.S. 113. The complaint's October 2009 suspension by respondent was a discrete act that commenced the running of its own statute of limitations. An allegation of discrete discriminatory acts must be filed within 180 days of the alleged act. § 46a-82 (f); *Williams v. Commission on Human Rights & Opportunities*, supra, 257 Conn. 284.

The complainant's suspension occurred on October 27, 2009 and her complaint was filed October 28, 2010 a year later. Complainant argues that she did not know she was discriminated against until she allegedly discovered that a male coworker was not suspended in October of 2010 for failing to respond to his pager. However, she additionally alleged in paragraph 11 that, "Previously there were other examples of unequal terms and conditions of employment due to sex discrimination in my department, but respondent has corrected the others issues after [a coworker] filed a CHRO complaint on 8/9/10...." If there were other examples of unequal treatment to her and other complaints filed then complainant should have reasonably known that before late April 2010 (180 days) or late July (300 days) that the discreet act of suspension may have been a violation of General Statute §46(a)-60(a)(1) or Title VII. Therefore, the allegation of an unlawful suspension is not actionable and it is time bared under state and federal law.

#### B. MOOTNESS

A case that is moot is nonjusticiable and must be dismissed for lack of subject matter jurisdiction. See *Kleinman v. Marshall*, 192 Conn. 479, 484, 472 A.2d 772 (1984). "Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute ... (2) that the interests of the parties be adverse ... (3) that the matter in controversy be capable of being adjudicated by judicial power ... and (4) that the determination of the controversy will result in practical relief to the complainant." (Internal quotation marks omitted.) *Pamela B. v. Ment*, 244 Conn. 296, 311, 709 A.2d 1089 (1998).

A Motion to Dismiss admits complainant's well-pleaded facts, which are viewed in the most favorable light . The current case involves a question of whether a violation of General Statutes §46a-60(a)(1) and §46a-58(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991 occurred. The interests of the parties are adverse, and this tribunal has jurisdiction to hear the case pursuant to General Statutes §46a-57. Further, the factual findings of this tribunal may provide grounds for redress to the Commission on Human Rights and Opportunities as well as the complainant. The remainder of the claims is not moot and will be heard.

#### C. EMOTIONAL DAMAGES

The issue of whether this tribunal can hear evidence of emotional damages is not a question of whether this tribunal has jurisdiction to hear the remaining claims. Further, a blanket exclusion of any evidence that could aid the trier of fact in its ultimate decision would not be proper. The pre-designation would provide fertile ground for ceaseless arguments regarding what testimony pertains to which issue. This tribunal will not exclude any generalized undefined body of evidence. If there is an objection to specific testimony offered at trial, the decision on such objections will be determined on an ad hoc basis. Therefore, this issue is not proper for a motion to dismiss.

#### IV. CONCLUSION

Based on the foregoing, complainant's claims regarding her October 2009 suspension are time barred and the correlating Motion to Dismiss is **GRANTED**. However, all claims

in the remainder of the complaint which occurred after April 25, 2010 are actionable and the respondent's Motion to Dismiss pertaining to such claims is **DENIED**.

It is so ordered this 4<sup>th</sup> day of February 2013.

  
Michele C. Mount,  
Presiding Human Rights Referee

cc.

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