

Commission on Human Rights and Opportunities ex rel.	:	Connecticut Commission on Human Rights and Opportunities
	:	
Betty Gabriel	:	CHRO No. 0620141
	:	EEOC No. 16aa600013
	:	
Rose Ann Carlson	:	CHRO No. 0620142
	:	EEOC No. 16aa600014
v.	:	
	:	
Town of Fairfield	:	June 30, 2009

Ruling re: the respondent's motion in limine
to preclude evidence regarding emotional distress damages

I

Betty Gabriel filed her affidavit of illegal discriminatory practice with the commission on September 26, 2005 and Rose Ann Carlson filed her affidavit of illegal discriminatory practice on September 27, 2005. They both alleged that the Town of Fairfield (respondent) violated Title VII and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) when it refused to hire them for the position of zoning inspector because of their sex. The affidavits were certified for public hearing on August 11, 2008 and, on August 28, 2008, the respondent filed its answers denying the allegations of discrimination.

On June 15, 2009, the respondent filed a motion in limine seeking to preclude the introduction of evidence regarding any emotional distress damages Gabriel and Carlson may have incurred. The commission filed its objection on June 29, 2009. For the reasons stated herein, the respondent's motion is denied.

II

In *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 101 (1995), the court concluded that “the legislature’s express exclusion of § 46a-60 from § 46a-86 (c) and (d) evidences its intent not to authorize compensatory damages, other than back pay as provided for in subsection (b), and attorney’s fees for employment discrimination.” Similarly, in *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 347 – 48 (1996), the court concluded “that § 46a-58 (a) provides no basis for claims of discriminatory employment practices that fall within the scope of § 46a-60. In this case, the hearing officer determined that the defendant had violated § 46a-60 (a) (7) (A), (B) and (C). That determination cannot be used as a basis for finding a violation of § 46a-58 (a).”

In their pending affidavits, however, Gabriel’s and Carlson’s § 46a-60 allegations are not the basis for their emotional distress damage claims. Rather, these damage claims arise from the respondent’s alleged unlawful practices under Title VII, which would constitute a violation of § 46a-58 (a) and afford Gabriel and Carlson the relief, including emotional distress damages, available under General Statute § 46a-86 (c).

For several reasons, it is apparent that emotional distress damages are available for a violation of § 46a-58 (a) arising from an unlawful employment practice under Title VII. First, General Statutes § 1-2z provides that: “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 text is plain and unambiguous and does not yield absurd or workable results, extratextual evidence of the meaning of the statute shall not be considered.” Section 46a-58 (a) plainly and unambiguously declares in relevant part: “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 . . . sex . . .” In this case, the respondent is alleged to have deprived Gabriel and Carlson of their rights under Title VII not to be discriminated against because of their sex; 42 U.S.C. 2000e; which would constitute a violation of § 46a-58 (a). Nor would it be an unworkable result for a deprivation of federal employment rights to be a violation of this section; rather, such a result would be consistent with the historic remedial purposes of this chapter.

Second, in *Trimachi v Connecticut Workers Compensation Committee*, the court determined that “General Statutes § 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut

antidiscrimination laws.” 27 Conn. L. Rpt. 469, 2000 WL 872451, 7 (Conn. Super., 2000).

Third, the Connecticut Supreme Court concluded that, under § 46a-58 (a), the commission could prosecute violations of General Statutes §§ 10-15c and 10-4b. The court further determined that the remedies available under General Statutes § 46a-86 (c) apply to violations of § 46a-58 (a). *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665 (2004). The court’s rationale in finding that violations of state education statutes are within the purview of § 46a-58 (a) is equally applicable in finding that violations of federal discrimination law are also within the purview of § 46a-58 (a).

III

Therefore, if the respondent refused to hire Gabriel and Carlson because of their sex, such action would constitute a deprivation of their rights under Title VII to a work environment free of sex discrimination, and thereby constitute a violation of § 46a-58 (a) enabling Gabriel, Carlson and the commission to seek emotional distress damages and the other remedies available to them under § 46a-86 (c).

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
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