Commission on Human Rights and Opportunities ex rel. John Pappy	: Commission on Human Rights and Opportunities
	: CHRO No. 0730288
v.	: EEOC No. 16a200700678
Southern Connecticut State University	: October 12, 2010

Ruling re: the respondent's motion to dismiss

On January 22, 2007, the complainant filed an affidavit of illegal discriminatory practice with the commission. In his affidavit, he alleged that the respondent violated Title VII and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) and (4) when it issued him warnings, retaliated against him, harassed him, denied him a raise and did not promote him because of his race and national origin. On April 30, 2008, the complainant filed an "amended and consolidated charging affidavit;" and, on February 26, 2009, the complainant filed an amendment alleging that the respondent had also violated General Statutes § 46a-70 (a) and (e). On November 23, 2009, the case was certified for public hearing. The respondent filed its post-certification answer and affirmative defenses denying the allegations of discrimination on January 15, 2010.

On September 21, 2010, the respondent filed a motion to dismiss (motion). The respondent claims that the commission lacks jurisdiction to

adjudicate federal Title VII employment claims in general, and federal Title VII retaliation claims in particular, under § 46a-58 (a). The respondent also claims that the commission lacks jurisdiction to adjudicate the complainant's untimely filed claims. On October 5, 2010, the commission filed its objection to the motion (objection).

The motion is granted in part and denied in part.

I

§ 46a-58 (a)

A

The complainant alleges, in part, that the respondent violated General Statutes § 46a-58 (a) when it discriminated against him on the basis of his race and national origin and in retaliation for his filing of an affidavit with the commission. Section 46a-58 (a) provides that: "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, sexual orientation, blindness or physical disability." The complainant alleged that the specific law of the United States that the respondent violated was Title VII.

Title VII provides in relevant part that:

> It shall be an unlawful employment practice for an employer-
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. Sec. 2000e-2 (a).

Title VII also provides that:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3 (a).

Because race and national origin are enumerated as protected bases in both Title VII and § 46a-58 (a), discriminating against an employee on the bases of race and/or national origin would be an unlawful employment practice under Title VII and thereby constitute a violation of § 46a-58 (a). Although

discriminating against an employee for the employee's opposition to an unlawful employment practice (often referred to as retaliation) would constitute a violation of Title VII, opposition to an unlawful employment practice (or retaliation) is not enumerated in § 46a-58 (a) as a protected basis. Therefore, the motion is denied as to the § 46a-58 (a) race and national origin claims, but the motion is granted as to the § 46a-58 (a) retaliation claim. claim.[1]

B

The respondent further contends that, in *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337 (1996), our Supreme Court determined that the commission has no authority to adjudicate a Title VII claim through § 46a-58 (a). First, the commission is not seeking to enforce Title VII directly; the commission is seeking to enforce § 46a-58 (a), which expressly makes deprivation of right and privileges secured or protected by the laws of the United States, such as Title VII, a violation of § 46a-58 (a). According to *Trimachi v. Connecticut Workers Compensation Committee* (sic), Superior Court, Docket

[1] General Statutes § 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 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." Also, as recently as its 2007 session, the General Assembly amended § 46a-58 (a) to add a protected basis (sexual orientation) without expanding coverage to include retaliation or opposition to an unlawful employment practice. See Public Acts of 2007, No. 07-62.

No. CV-97-0403037 (June 14, 2000) (27 Conn. L. Rptr. 469) (2000 WL 872451, 7), "General Statutes § 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws."

Second, contrary to the respondent's assertions, the courts decisions in *Truelove & Maclean, Inc.* and *Hill v. Pinkerton Security & Investigations Services, Inc.*, 977 F. Sup. 148 (D. Conn. 1997) are not dispositive of this issue because those courts confronted a very different legal issue. In both those court cases, the plaintiffs were bringing only state employment claims through both § 46a-58 (a) and § 46a-60 (a). In this case, the complainant's § 46a-58 (a) claim arises not from an alleged violation of § 46a-60 but rather from an alleged discriminatory employment practice under Title VII.

Third, the fact that under § 46a-86 (c) damages can be awarded upon a finding of a discriminatory practice prohibited by § 46a-58 demonstrates that § 46a-58 (a) is a substantive statute and not merely a generalized statement of legislative policy.

Further, adjudication of a § 46a-58 (a) claim arising from an alleged discriminatory practice under Title VII is consistent with the public policy underlying § 46a-58 (a) as expounded by our Supreme Court in *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665 (2004). In *Board of Education*, the Court noted that § 46a-48 (a) "is broad and inclusive

language, and strongly suggests a reference to the broad and inclusive panoply of rights, privileges and immunities, derived from a broad and inclusive set of sources, namely, *any federal or state laws*, or either or both constitutions." (Emphasis added.) Id., 668.

C

In its objection, the commission argues that the absence of retaliation from § 46a-58 (a) is not fatal both because retaliation is not a protected class "but rather is a theory of discrimination" and because, citing *Curry v Allan S. Goodman, Inc.*, 286 Conn. 390 (2008), "courts have recognized that certain matters may be in a statute although not explicitly stated." Objection, p. 3. In *Curry*, the Court examined § 46a-60 to determine whether there was an implied duty of reasonable accommodation. The issue here, though, is the absence of retaliation, or opposition to an unlawful employment practice, not from § 46a-60 but rather § 46a-58. In examining § 46a-58 (a), courts have already determined that there are some forms of discrimination that are not within the purview of § 46a-58(a) because they are not enumerated in the statute. *Poeta-Tisi v. Griffin Hospital*, Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. AAN-CV-05-4003197 (May 17, 2006) (2006 WL 1494078, 8)

II

Timeliness of allegations

The respondent also claims that the commission lacks jurisdiction to adjudicate claims that the respondent contends were untimely filed, specifically the denial of a 5% salary increase in September 2000; the denial of a promotion to the position of Associate Director in June 2001; the denials of promotions in 2004, 2005 and 2006; and the denial of a merit increase on March 28, 2006. At this stage of the proceeding and given the limited discovery available in administrative proceedings (production requests only), it would be premature to dismiss these allegations at this time. It may be possible for the commission to establish a continuing violation or a continuing course of conduct. Further, even if these acts are untimely, they may constitute relevant and material background evidence supporting timely claims.

III

In summary, the motion is denied as to the § 45a-58 (a) claims regarding race and national origin and, without prejudice, to the claim of untimeliness. The motion is granted as to the § 46a-58 (a) claim of retaliation.

The pre-hearing and public hearing schedule remains as previously ordered.

_____
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
David L. Kent, Esq.
James V. Sabatini, Esq.
Eleanor M. Mullen, Esq.
Jaye Bailey, Esq.