STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, *ex rel*. Stephen Warner, Complainant	:	CHRO Case No. 0840031
v.		
NERAC, Inc., Respondent	:	August 2, 2012

RULING ON RESPONDENT'S MOTION TO DISMISS

PRELIMINARY STATEMENT

On July 27, 2012, the respondent, NERAC, Inc., filed a motion to dismiss the complaint on the grounds of subject matter jurisdiction. The respondent argues that the Office of Public Hearings (OPH) lacks subject matter jurisdiction to hear the age discrimination claim because of the minimum age requirement under the federal Age Discrimination in Employment Act. The respondent further argues that the CHRO lacks subject matter jurisdiction to bring a claim for familial status under Connecticut General Statutes § 46a-60(a)(1), and that ERISA pre-empts jurisdiction of the complainant's health insurance claim.

PROCEEDURAL HISTORY

On July 31, 2007, the complainant, Stephen Warner, filed wrongful termination claim with the Commission on Human Rights and Opportunities. The complainant alleged that NERAC, Inc. discriminated against him based on his age (38 years old at

time of termination) and sex (his wife's pregnancy). The complainant alleges that the respondent terminated him because of his age as well as his wife's pregnancy and the birth of his second child. The complainant alleges the respondent ordered his termination because of the affect his status had on NERAC's insurance. The complainant alleges that the respondent's actions violate Connecticut General Statutes § 46a-60(a)(1), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, and the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634 (20+ employees), as enforced through Connecticut General Statute § 46a-58(a). On November 20, 2009, the complainant amended the complaint to add a statutory cite Connecticut General Statute § 46a-60(a)(5), and to add Kevin Bouley as an additional respondent.

STANDARD

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. Jolly, Inc. v. Zoning Board of Appeals, 237 Conn. 184 (1996); Upson v. State, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. Malasky v. Metal Products Corp., 44 Conn. App. 446, 451-52, *cert. denied*. 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant, and every reasonable inference is to be drawn in his favor. New England Savings Bank v. Bedford Realty Corp., 246 Conn. 594, 608 (1998). During evaluation, there should be "presumption in favor of subject matter jurisdiction."

Williams v. Comm'n on Human Rights & Opportunities, 257 Conn. 258, 266, 777 A.2d 645, 651 (2001). *See also* Kelly v. Albertsen, 114 Conn. App. 600, 606, 970 A. 2d 787, 790 (2009) (stating that "every presumption favoring jurisdiction should be indulged.").

According to the Employee Retirement Income Security Act (ERISA):

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." 29 U.S.C.A. § 1144 (West).

There is "no preemption where relationship to ERISA is 'tenuous, remote or peripheral'. A state discrimination claim does not automatically 'relate to' ERISA." Westinghouse Elec. Supply Corp. v. Massachusetts Comm'n Against Discrimination, CIV. A. 97-4267E, 1999 WL 140492 (Mass. Super. Mar. 5, 1999). *See also* Yageman v. Vista Maria, Sisters of the Good Shepherd, 767 F.Supp. 144, 145 (E.D.Mich.1991).

DISCUSSION

This tribunal has the power to dismiss a complaint *sua sponte* or at the motion by a party "if the complainant or the commission fails to establish jurisdiction." Regs., Conn. State Agencies § 46a-54-88a(d)(1). In evaluating a motion to dismiss by a party for lack of jurisdiction, the presiding officer may also determine that subject matter jurisdiction exists.

I. Age Limit on Discrimination Claims

The respondent argues that the ADEA limits the protected class for age discrimination to those 40 and over and claims this age limit applies to state claims. The respondent concludes that this tribunal therefore lacks subject matter jurisdiction over an age discrimination claim brought by a complainant who was 38 years old at the time of the alleged discriminatory act. Generally, Connecticut courts look to federal legal precedent for guidance when interpreting anti-discrimination statutes. Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96, 103, 671 A.2d 349, 355 (1996) (stating that "Although this case is based solely on Connecticut law, we review federal precedent concerning employment discrimination for guidance in enforcing our own anti-discrimination statutes.").

While federal law limits age discrimination protection to people over age forty, neither state common law nor state statutory law specifically adopt this minimum. *See* 14 Conn. Prac., Employment Law § 7:7. "Unlike its federal counterpart, however, the Connecticut employment discrimination provisions contain no specific age limitation." Commission on Human Rights and Opportunities ex rel. Adam Szydlo, 2007 WL 4258347 (November 19, 2007). Traditionally, Connecticut discrimination law is broader than federal law. Conn. Gen. Statute § 46a-60(a)(1) identifies protected classes, but does not state or allude to a minimum age. Therefore, this tribunal has jurisdiction over this claim.

II. Pregnancy Discrimination Claim

The respondent argues that the complainant alleges discrimination based on familial status, which is not a protected class under Conn. Gen. Statute § 46a-60(a)(1). The Complainant does not allege discrimination because of familial status. The complaint identifies the discrimination as sex based, which is covered under Conn. Gen. Stat. § 46a-60(a)(1). Under Connecticut law, discrimination based on pregnancy is sex discrimination. Doe v. Maher, 40 Conn. Supp. 394, 444-46, 515 A.2d 134, 159-60 (Super. Ct. 1986) (stating that "…any classification which relies on pregnancy as the determinative criterion is a distinction based on sex.") (quoting Massachusetts Electric Co. v. Massachusetts Commission Against Discrimination, 375 Mass. 160, 167, 375 N.E.2d 1192 (1978)); Kenney v. State of Connecticut Dept. of Mental Health & Addiction Services, CV020813589, 2007 WL 3317997 (Conn. Super. Ct. Oct. 24, 2007).

Although pregnancy-based sex discrimination traditionally has female complainants, there is no controlling law prohibiting men from filing a claim. The Equal Employment Opportunity Commission recently allowed a male complainant to file a claim alleging that he suffered pregnancy discrimination by his employer when his wife was pregnant. *See* Nicol v. Imagematrix, Inc., 767 F. Supp. 744 (E.D. Va. 1991). Title VII of the Civil Rights Act of 1964 prohibits "sex-plus" discrimination, in which an employer "does not discriminate against the class of men or women as a whole but rather treats differently a subclass of men or women." Chadwick v. WellPoint, Inc., 561 F.3d 38, 43 (1st Cir. 2009). *See also Newport News Shipbuilding & Dry Dock Co. v. EEOC,* 462 U.S. 669,

103 S.Ct. 2622, 77 L.Ed.2d 89 (1983); Guglietta v. Meredith Corp., 301 F. Supp. 2d 209, 213 (D. Conn. 2004). For the purpose of evaluation, the presiding officer must accept as true the complainant's allegation that the respondent discriminated against him because his wife was pregnant. The complainant has a claim over which the OPH has jurisdiction.

III. Absence of ERISA Claim

The respondent argues that the complainant attempts to assert claims regarding health insurance benefits. The respondent concludes that ERISA pre-empts OPH jurisdiction because the complainant seeks an alternative enforcement mechanism. The complainant is not litigating an ERISA claim because he is not seeking insurance benefits under the company plan and he is not alleging that the company wrongfully denied insurance benefits. Westinghouse Elec. Supply Corp. v. Massachusetts Comm'n Against Discrimination, CIV. A. 97-4267E, 1999 WL 140492 (Mass. Super. Mar. 5, 1999). The actual allegation is that NERAC, Inc. wrongfully terminated the complainant. Id. (stating"'[T]he real gravamen' of Chanson's complaint is that Westinghouse discharged him as a result of handicap discrimination.") (citing Yageman v. Vista Maria, Sisters of the Good Shepherd, 767 F.Supp. 144, 145 (E.D.Mich.1991). Since the state discrimination claim does not directly relate back to ERISA, and a remedy could exist apart from the health insurance plan. Id. The complainant does not allege a claim regarding the insurance, but requested production of documents to discover who controls the plan and to discover evidence that establishes the respondent's discriminatory practices and policies. The standard for evaluating a motion to dismiss

requires the presiding officer draw the reasonable inference that the complainant's explanations for the requests are true. The complaint is based on a different legal theory than the respondent argues: the retaliatory act is at issue, not the health insurance plan. ERISA does not pre-empt CHRO jurisdiction.

CONCLUSION

This tribunal has subject matter jurisdiction over age and sex discrimination claims. The complainant is not asserting a claim directly connected to the health insurance plan. For the forgoing reasons, the respondent's Motion to Dismiss for lack of subject matter jurisdiction is **DENIED**.

It is so ordered this 2nd day of August 2012.

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Michele C. Mount,
Presiding Referee

cc.

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