Connecticut Supreme Court Hears Arguments on Hostile Work Environment and CTFMLA Cases

By Daniel Schwartz on January 31st, 2012

It's not very often that the Connecticut Supreme Court considers employment law issues.

But today, two notable cases are being argued in front of the court. Both could have an impact on employers in the state.

Court Considers Employment Law Cases

In Patino v. Birken Manufacturing, the court is being asked to consider whether a hostile work environment harassment claim can be brought under state law (Conn. Gen. Stat. Sec. 46a-81c if you're keeping track at home).

The court's summary of the case is as follows:

The plaintiff, Luis Patino, was employed by the defendant, Birken Manufacturing Company (Birken), as a machinist. Beginning in 1991, some of Patino's coworkers began calling him derogatory homosexual names. The derogatory words were not spoken to Patino directly but were made in his presence. In 2005, Patino commenced this action, alleging that Birken violated General Statutes § 46a-81c by failing to prevent its employees from creating a hostile work environment for Patino on the basis of his sexual orientation. Section 46a-81c provides in relevant part: "It shall be a discriminatory practice . . . [f]or an employer, by himself or his agent, . . . to discriminate against [an individual] . . . in terms, conditions or privileges of employment because of the individual's sexual orientation . . . ." (Emphasis added.)

After trial, the jury returned a verdict in favor of the plaintiff. Birken filed a motion to set aside the verdict, arguing that no cause of action exists for a hostile work environment claim under the plain and unambiguous language of § 46a-81c. The trial court acknowledged the absence of an explicit hostile work environment provision in § 46a-81c but found that this was not dispositive. Rather, the court opined that the answer to the question before it turned on the interpretation of the phrase "terms, conditions or privileges of employment" in § 46a-81c. The court observed that in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986), the United States Supreme Court, in the context of a sexual harassment claim under Title VII, broadly interpreted the phrase "terms, conditions or privileges of employment" to include protection from a hostile work environment. Relying on Vinson, the trial court ruled that the phrase "terms, conditions, or privileges of employment" in § 46a-81c imposes liability on an employer who fails to prevent its employees from creating a hostile work environment for a coworker on account of his sexual orientation.

Next, Birken argued that the evidence was insufficient to establish a hostile work environment because the derogatory words Patino heard were not directed at him. Relying on federal court precedent, the trial court ruled that discriminatory conduct does not have to be directed at the plaintiff or to his face to be actionable. Thereafter, noting that Patino consistently overheard his coworkers making derogatory remarks about his sexual orientation in his presence, the court rejected Birken's insufficiency of the evidence claim, stating that Patino's workplace was both objectively and subjectively hostile. Accordingly, the trial court denied Birken's motion to set aside the verdict.

On appeal, Birken contends that § 46a-81c does not provide a cause of action for a hostile work environment claim. Alternatively, Birken claims that the evidence was insufficient to establish that the conduct of the coworkers created a hostile work environment for Patino.

The other case to be argued today is Velez v. Connecticut Department of Labor. I've previously written about the case here and here. The crux of the case surrounds whether employers need to count out-of-state employees for purposes of the state FMLA laws. Notably, both the employer AND the Connecticut Department of Labor argue together that out of state employees should not be counted.

The court's summary of the case states:

The plaintiff filed a complaint with the state department of labor alleging that her employer, defendant Related Management Company, had violated the Connecticut family and medical leave law, General Statutes § 31-51kk et seq., in firing her. The department of labor dismissed her complaint, finding that Related Management was not subject to the state family and medical leave law because it employed only thirty-five employees in Connecticut, and General Statutes § 31-51kk (4) defines an "employer" for purposes of the family and medical leave law as one "who employs seventy-five or more employees."

The plaintiff appealed to the Superior Court, and the parties stipulated that, while Related Management employed only thirty-five people in Connecticut, it had over a thousand employees nationwide. The trial court disagreed that Related Management was not an employer for purposes of the family and medical leave law. The court noted that § 31-51kk (4) contains no geographic limitation on counting employees and ruled that, in determining whether an employer meets the statutory seventy-five employee threshold, out-of-state employees should be counted. The court refused to defer to two previous department of labor decisions that concluded that § 31-51kk (4) did not allow the counting of out-of-state employees, finding that those decisions were not reasonable and that the agency's interpretation of the statute would ignore the underlying purpose of protecting small employers and instead skew the exemption in favor of those employers having few employees in Connecticut but many employees in other states.

Related Management and the department of labor appeal. They claim that the trial court should have deferred to the agency's reasonable and time-tested interpretation of § 31-51kk (4) and that its interpretation is supported both by reference to the agency's regulations and the legislative history of the family and medical leave law. The department of labor also argues that the court's interpretation of § 31-51kk (4) would lead to unworkable results.

A decision on both of these cases is expected later this year. (The briefs are not yet available online, but will be posted here soon.)