

Age Claim by 38 Year Old Allowed to Proceed under CFEPA

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A referee of the Connecticut Office of Public Hearings found that an employee under age 40 could state an age discrimination claim under the Connecticut Fair Employment Practices Act (CFEPA). [CHRO v. NERAC, Inc.](#), CHRO Case No. 0840031 (Aug. 2, 2012). The referee also held the male employee could state a pregnancy related sex discrimination claim under the Act based on his wife's pregnancy. The man claimed he was fired based on his age and after his wife became pregnant.

The referee found the employee was able to state a claim for age discrimination because state law is broader than the federal Age Discrimination in Employment Act, which requires a claimant to be at least 40 years old in order to be covered by that law. While acknowledging that when interpreting state discrimination statutes the courts often look to federal precedence for guidance, no such guidance is required here. Although the express language of the federal law specifically requires a claimant to be at least 40 years old, CFEPA has no such minimum requirement per se. In addition, state discrimination law is generally considered broader than federal law.

While the referee's decision was in response to the company's motion to dismiss, and has not been subject to appeal, at least two federal judges have looked to federal law for guidance and have held that CFEPA does not cover claims of age discrimination made by persons under 40. [Guglietta v. Meredith Corp.](#), 301 F. Supp. 2d 209 (D. Conn. 2004), and [Rogers v. First](#)

Union National Bank, 259 F. Supp. 200, 209 (D. Conn. 2003). The referee's decision follows a pattern of hearing officers ignoring court rulings on interpretive issues and damage awards.

With regard to the gender claim, the employee alleged he was fired because his company was concerned about increased health care costs related to his wife's pregnancy. Although the referee recognized that traditional pregnancy based claims are normally made by women, claimant's sex was not a bar to bringing such a claim. The referee also cited a recent EEOC case in which a male was permitted to file a complaint alleging he suffered pregnancy discrimination when his wife became pregnant.

As evidenced by this case, employers must base any employment decision on a non-discriminatory business reason, and be able to credibly articulate that reason if faced with a legal challenge, even one that is unexpected.

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