Schaffer Law, LLC
Labor and Employment Law

Connecticut Fair Employment Practices Act Prohibits Perceived Disability Discrimination

February 2015

The Connecticut Supreme Court recently ruled that the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-51 et seq., (CFEPA), not only prohibits discrimination based on *actual* physical disability, but also applies to discrimination based on *perceived* physical disabilities. Desrosiers v. Diageo North American, Inc. This brings Connecticut state law in line with the federal Americans with Disabilities Act, which expressly protects employees from discrimination based on both actual and perceived disability.

Ambiguity in the CFEPA's statutory language required the Court to undergo a complex analysis to determine whether employees who employers perceived as being disabled were protected by the Act. While the Act's language clearly extended protection to those suffering from a "mental disability," including those who "[have] a record of, or [who are] *regarded as* having one or more mental disorders," the definition of "physical disability" was limited to "any individual who *has* any chronic physical handicap, infirmity or impairment…." This left open the question whether those *regarded as* having a physical disability, even if such perception was incorrect, enjoyed protection under the Act.

In answering the question in the affirmative, the Supreme Court first noted the difference in language covering mental and physical disabilities, and stated that the statutory language on its face was clear and unambiguous. In essence, the plain language clearly excluded perceived physical disabilities while covering perceived mental disabilities. In most cases this would end the inquiry, however, the Court went on to employ a technique of statutory interpretation that

requires additional analysis when it believes the plain language yields an "absurd or unworkable result." Finding that to be the case here, the Court stated:

> Here, although the language of § 46a-60 (a)(1) is plain and unambiguous, a literal application of the statutory language would lead to a bizarre result. Namely, under the plain language of § 46a-60 (a)(1), if an employee has a chronic disease, the employer may not discharge the employee on that basis. If, however, the employee is undergoing testing that leads his employer to believe that he has a chronic disease, the literal terms of § 46a-60 (a)(1) do not protect the employee from discharge on that basis, despite the fact that the employer's action, in both cases, was premised on the same discriminatory purpose.

As a result, the Court then dove into the legislative history and found that CFEPA was intended to "increase protections for individuals with disabilities," … and was meant to be "as broad and inclusive as possible." Therefore, protecting those perceived as being physically disabled is consistent with this broad intent.

Further, the Court noted that the agency charged with interpreting the statute, the Connecticut Commission on Human Rights and Opportunities ("CHRO") has since 1989 interpreted CFEPA to cover perceived physical disabilities. Therefore, the agency's position should be given great deference, especially since the legislature has had ample time to amend the Act, if it believed the agency's interpretation was incorrect. Its acquiescence instead indicates general agreement with the agency's view of the language.

While Justice Zarella issued a strong dissent arguing that the clear language does not create absurd results, and therefore perceived physical disabilities should not be protected under the Act, his colleagues carried the day. As such, Connecticut and federal law now both clearly protect employees who are perceived as having either a physical or mental disability.

For more information or assistance, contact scott@schaffer-law.com or 860-216-1965.

www.schaffer-law.com