Young Lawyers in the Connecticut Workplace

By CINDY M. CIESLAK

Cindy M. Cieslak *is the chair of the CBA Young Lawyers Section for the 2020-2021 bar year. She is a partner at Rose Kallor LLP in Hartford, where she focuses her practice on labor & employment litigation as well as independent workplace investigations. She graduated summa cum laude from Penn State University in 2009 and received her JD from UConn School of Law in 2012.*

In my second column, I am delighted to continue the discussion from my last article regarding the challenges and issues a young lawyer faces during a pandemic.

This past summer, I had the privilege to participate in a working group of Connecticut Bar Association members concerning a proposed amendment to Rule 8.4 of the Connecticut Rules of Professional Conduct which would prohibit discrimination and harassment in the practice of law. By the time this article is published, we might know whether the proposed amendment was adopted in Connecticut. Regardless of the outcome, my participation in the working group highlighted an unexpected area of Connecticut employment law where opinions among Connecticut employment lawyers diverge.

During the drafting process related to the proposed rule amendment, the working group concluded that the proposed commentary should include that the substantive law of Connecticut's antidiscrimination and antiharassment statutes and case law should guide application of the proposed amended rule, where applicable. During this discussion, I raised some concern that the rule might not protect against discrimination and harassment faced by younger lawyers. The legal profession is somewhat unique as compared to some other professions as it relates to age of employees. I have witnessed opposing counsel, clients, and judges express a desire or preference to work with an older lawyer, and quite frankly, the preference is not always attributable to a younger attorney's experience or lack thereof. Yet, the federal law prohibiting age discrimination, the Age Discrimination in Employment Act (ADEA), only provides protection for employees who are at least 40 years of age.[1]

In response to my concern about whether the proposed amended rule prohibiting harassment and discrimination in the practice of law would protect younger lawyers, a highly regarded fellow employment lawyer, whom I also greatly respect, suggested that Connecticut's anti-discrimination law protects workers under 40 years old, because the Connecticut Fair Employment Practices Act (CFEPA) prohibits an employer from refusing to hire, to discharge from employment, or to otherwise discriminate against an individual in compensation or in terms, conditions, or privileges of employment because of the individual's age.[2] Indeed, the state statute does not have the same type of age "floor"—40 years of age—as its federal counterpart. However, I had recently researched this issue in connection with a case I was litigating, and through my research, I did not locate a single controlling authority from the Connecticut Appellate Court or the Connecticut Supreme Court that held that the CFEPA protects employees under age 40. In fact, I have argued in good faith that the CFEPA follows federal law and only protects employees over 40 years old.

In connection with research for this article, I conducted a poll, albeit a very unscientific poll, and asked some of my fellow employment lawyers whether they believe the CFEPA protects employees of all ages, including employees under 40 years old. Opinions were split—some of my colleagues agreed with me that Connecticut law follows federal law, while others believed that Connecticut law departed from federal law because the express language of the statute did not provide an age "floor." However, we all seemed to agree that the law on this issue could be further developed. The Connecticut Commission on Human Rights and Opportunities (CHRO), which is the administrative agency that hears employment discrimination claims in the first instance in our state, takes the position that the CFEPA does not have an age minimum.[3] However, both the Connecticut Superior Court[4] and the United States

District Court for the District of Connecticut[5] have ruled that the CFEPA should be interpreted consistent with its federal counterpart. Yet, some other states with antidiscrimination statutes which do not identify an age limit have found so-called "reverse age discrimination claims" (i.e. lawsuits by younger employees claiming discrimination because an older employee was preferred solely due to age) to be cognizable claims.[6]

When speaking on employment law topics, I am often asked which types of employment-related lawsuits I anticipate given current circumstances and societal trends. When I have been asked this question throughout the pandemic, I have quickly responded that we might expect a rise in age discrimination claims, disability discrimination claims, and family and medical leave claims given that legitimate COVID-related employment decisions may nevertheless disproportionately impact older workers, some of whom are at a higher risk given underlying medical conditions, or workers with family members with underlying medical conditions. However, as I expressed in my previous article, the pandemic presents challenges to attorneys of all ages, including younger lawyers. Indeed, younger lawyers are not immune from harassment and discrimination simply by virtue of not yet having attained age 40. Therefore, the pressures of the pandemic and the historic social justice movement of this year may very well also impact the types of age discrimination complaints that may be asserted, and our state's high courts might have an opportunity to provide a more definitive answer regarding whether the CFEPA protects employees under 40 years old sooner rather than later. ■

NOTES

1. 29 U.S.C. § 631.
2. Conn. Gen. Stat. § 46a-60(b)(1).
3. *CHRO, ex rel. Stephen Warner v. NERAC, Inc.*, CHRO No. 0840031 (Ruling on Respondent's Motion to Dismiss, August 2, 2012).
4. *Theriault v. Renbrook Sch.*, No. CV 17-6076937-S, 2019 Conn. Super. LEXIS 199, at *19 (Feb. 14, 2019) ("An age discrimination plaintiff over forty years old is in the protected class."); *Donegan v. Town of Middlebury*, No. CV156026920S, 2018 Conn. Super. LEXIS 516, at *12 n.3 (Conn. Super. Ct. Mar. 9, 2018) ("CFEPA does not contain a specific age that identifies which individuals belong to the protected class. Nonetheless, courts have turned to the same age used by the ADEA, to wit, forty."); *Benedetto v. Dietze & Assocs., LLC*, No. UWYCV126015898S, 2014 Conn. Super. LEXIS 810, at *9 (Apr. 10, 2014) ("The record shows that the person who replaced Ann Marie Benedetto was forty-seven years old, and, therefore was herself in the protected class.").
5. *Soules v. Connecticut*, No. 3:14-CV-1045 (VLB), 2015 U.S. Dist. LEXIS 131985, at *26 (D. Conn. Sep. 30, 2015); *Smith v. Connecticut Packaging Materials*, No. 3:13-cv-00550 (JAM), 2015 U.S. Dist. LEXIS 5265, at *6 n.4 (D. Conn. Jan. 16, 2015); *Guglietta v. Meredith Corp.*, 301 F.Supp.2d 209, 212-13 (D. Conn. 2004); *Rogers v. First Union National Bank*, 259 F. Supp. 2d 200, 209 (D. Conn. 2003) ("As to the specific age the Connecticut Supreme Court would select, it appears that the Supreme Court would use the same age floor used in ADEA-age 40.").
6. Tracey A. Cullen, *Reverse Age Discrimination Suits and the Age Discrimination in Employment Act*, 18 J. Civ. Rts. & Econ. Dev. 271, 304-08 (2003).

Pro Bono

Continued from page 33

fession, that camaraderie and bond was always deeply meaningful to me. I've devoted a fair amount of time in efforts to understand and address our profession's diversity, equity, and inclusion challenges. When I think of moments of meaningful inclusion, in my own professional life, my work with David comes to mind immediately. I was proud to work alongside him, to share in so many hard-fought battles and challenges, and to face some of my own with his advice and guidance.

Although we e-mailed frequently afterwards, the last time I saw David was during a virtual Pro Bono Committee meeting at the end of the 2019-2020 bar year. As I begin my service as chair of the Pro Bono Committee, I miss David's presence and wisdom. I miss his e-mails inquiring about projects, or offering (sometimes unsolicited) advice on new initiatives. I miss his dry sense of humor and the opportunity to occasionally tease him (while privately maintaining a healthy sense of terror while doing so). I feel a deep sense of sadness that we will never share another one of his tightly-timed working lunches, and laugh when I think of my early efforts to expand his repertoire of lunch venues. I miss the ability to ask for his insight and perspectives on tough legal questions, especially as we face an unprecedented impending eviction crisis.

The Connecticut Bar Association, and particularly its Pro Bono Committee, will always be indebted to David Pels for his service and example. If you are interested in helping to further his legacy, here are a few ways that you can do so:

Volunteer through CBA Pro Bono Connect: As Connecticut faces an oncoming eviction crisis, tenants, who are self-represented in over 90 percent of evictions, will need your help. Volunteer at ctbar.org/probonoconnect and select "Housing: Eviction Defense." Take the Pro Bono Pledge, agreeing to take one eviction case in the coming year, and you'll receive immediate access to on-demand training materials, which include an eviction defense training manual that Attorney Pels helped to prepare.

Donate to the David A. Pels Homelessness Prevention Fund at the Connecticut Bar Foundation: The David A. Pels Homelessness Prevention Fund was established at the Connecticut Bar Foundation in 2019, upon David's retirement. The fund provides small financial grants to tenants facing the threat of eviction or housing subsidy termination, to allow them to remain in their housing. Visit ctbarfdn.org/donate to participate.

Thank you for allowing me to share these few words to honor the memory of my friend, mentor, and role model, Attorney David A. Pels. He will be sorely missed, but never forgotten. ■