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Connecticut Supreme Court Expands Scope of Hostile Work Environment Protections to Include Sexual Orientation

By Jason Stanevich and Paul Testa

Employers in Connecticut have a duty to protect employees from harassment based on sexual orientation that is just as compelling as their duty to prevent workplace harassment based on race, sex and other protected characteristics. The Connecticut Supreme Court has recently made this clear in *Patino v. Birken Manufacturing Company*,¹ a unanimous decision that affirms a jury award of \$94,500 for emotional distress suffered by an employee who was subjected to a hostile work environment because of his sexual orientation.

Factual Background

Luis Patino had worked for Birken Manufacturing Company for approximately 27 years. He claimed in a lawsuit that for at least a decade he was subjected to derogatory name-calling based on his sexual orientation. The name-calling consisted of derogatory slurs for homosexuals in Spanish, Italian and English. While the aspersions were not always spoken directly to Patino, the language was regularly used in his presence and became part of his general working conditions. Patino “testified that the demeaning treatment made him so upset that his body would shake, his work product suffered, and it became difficult for him to sleep.”

Patino made numerous oral and written complaints to management. Although his supervisor held a meeting about the harassment, and transferred one alleged offender to a different location, the abuse continued. So did Patino’s complaints to management and the Connecticut Commission on Human Rights and Opportunities (CHRO). When the harassment persisted despite his complaints, Patino eventually filed suit in Connecticut Superior Court alleging that the company had violated Connecticut General Statutes section 46a-81c(1)² by creating a hostile work environment because of the plaintiff’s sexual orientation, and failing to take adequate measures to alleviate the harassment or to remedy the hostile work environment.

Patino’s evidence at trial included detailed journal entries in which he had recorded the pattern of harassment over many years. The jury returned a verdict in his favor and awarded \$94,500 in

1 No. SC 18441, 2012 Conn. LEXIS 179 (May 15, 2012).

2 “It shall be a discriminatory practice in violation of this section: For an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against him in compensation or in terms, conditions or privileges of employment because of the individual’s sexual orientation or civil union status.”

noneconomic damages. After the trial court refused to set the verdict aside, the company appealed. Among the company's arguments to the appellate court was that Connecticut law permits damage awards for a hostile work environment only when the claim is based on sexual harassment. The Connecticut Supreme Court exercised its statutory prerogative to transfer the appeal from the appellate court to itself.

Connecticut Supreme Court's Decision

Deciding that the trial court's refusal to set aside the verdict was not an abuse of discretion, the Connecticut Supreme Court squarely held that Connecticut recognizes a claim for hostile work environment discrimination based on sexual orientation. The court rejected the company's argument that Connecticut law protects against hostile work environment only when based on sexual harassment. It refused to accept that the legislature intended such a limitation "giving license to rampant workplace bigotry and thwarting the very purpose of antidiscrimination laws." Accordingly, the court found that the legislature intended the phrase "terms, conditions or privileges of employment" in section 46a-81c(1) as a term of art evidencing "its intent to permit hostile work environment claims where employees are subject to sexual orientation discrimination."

The Connecticut Supreme Court also rejected the company's alternative argument that the jury's determination that a hostile work environment existed was unsupported by the evidence. Summarizing the evidence, the court stated:

The evidence of a hostile work environment in the present case is that derogatory comments were made multiple times per week, sometimes several times a day, over a prolonged period of time, despite the plaintiff's repeated complaints to his supervisors. The plaintiff testified that his coworkers constantly yelled slurs in his presence as he worked on the shop floor. The plaintiff meticulously recorded each incident in his diaries, which were admitted into evidence for the jury to consider in reaching its verdict. On the basis of this evidence, we conclude that the trial court did not abuse its discretion when it concluded that the jury reasonably could have determined that the plaintiff was subjected to a hostile work environment.

The court had little patience with the company's arguments that, while Patino was fluent in only English and Spanish, he testified that he was called derogatory names in Spanish, French, Indian, Laotian, Portuguese and Vietnamese, and that, in addition to being a homophobic slur, the Spanish word "pato" means a male duck. "As there are presumably few occasions on which employees would discuss male ducks on the shop floor of an industrial plant such as defendant's, the argument that the plaintiff's coworkers did not intend to use the word pato in a derogatory way lacks merit," the court stated.

What this Means for Employers

Connecticut requires employers to provide every supervisor with sexual harassment prevention training within six months of assuming supervisory duties. This decision is a strong reminder that such training must emphasize the illegality of workplace harassment based on sexual orientation – as well as race, religion, age and other protected characteristics – in addition to sex. This may be a propitious time for employers to provide refresher training to supervisors that emphasizes their responsibility to maintain a workplace culture that does not tolerate harassment based on sexual orientation or any other protected characteristic. Portions of the Connecticut Supreme Court's decision in Patino might actually be incorporated into such training, because the description of widespread and longstanding verbal abuse directed toward the plaintiff is almost a case study in the sort of derogatory and offensive comments that an employer cannot afford to tolerate in the workplace.

Employment litigators should also take note of how the plaintiff's diaries, which were received into evidence, influenced both the jury and the court. The plaintiff said he started keeping these diaries after deciding it was useless to continue complaining to management about the continuing abuse. Even if they include time periods outside the statute of limitations, such records may be admitted at trial to establish the pattern and nature of ongoing conduct, as well as the likelihood that supervisors participated or were aware of it. The detailed descriptions recorded by the plaintiff not only established that the harassment occurred, but also forced the jury to consider his point of view as a victim when it placed a monetary value on the emotional effect the abuse had on him. The potential existence of such powerful evidence should not be overlooked by counsel for the plaintiff or the defendant in cases that raise issues of this sort.

Jason Stanevich and Paul Testa are Associates in Littler Mendelson's New Haven office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Mr. Stanevich at jstanevich@littler.com, or Mr. Testa at ptesta@littler.com.