

Employment Practices Liability

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Connecticut Superior Court Grants Summary Judgment for Municipality on Plaintiff's Discrimination Claim

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On March 16, 2018, the Connecticut Superior Court granted summary judgment for the City of Middletown on plaintiff's race and national origin discrimination claims in *Ulyses Alvarez v. City of Middletown*.

Factual Background: Plaintiff, a former probationary police officer for the City of Middletown, was subject to an Internal Affairs Investigation after a civilian accused him of sexual misconduct. During the investigation, and before it was completed, the police department reviewed the probationary police officer's performance. Despite being afforded 144 additional hours of field training, plaintiff continued to exhibit performance deficiencies, including situational awareness issues and organizational issues, including failure to properly document incidents and file proper reports. In fact, the plaintiff had failed to properly document the event that led to the incident for which plaintiff was investigated for sexual misconduct. Accordingly, the Chief of Police recommended probationary discharge, and noted that the ongoing investigation may lend additional reasons for plaintiff's discharge. Upon completion of the investigation, the investigator could not substantiate the specific allegations of sexual misconduct from the civilian, but ultimately concluded that it was likely something inappropriate happened between the probationary officer and the civilian.

When the probationary officer learned he was subject to probationary discharge, he offered his resignation in lieu of termination in order to retain his POST certification. However, he later claimed that he was constructively discharged on the basis of his race and national origin, since he had been subjected to a few alleged off-hand comments by other recruits while attending the Police Academy. He additionally claimed that other racially charged comments were made to him during the hiring process and while he was employed by the City.

Court's Analysis: The Court found that plaintiff could not prove a *prima facie* case of discrimination, which requires a showing that: 1) plaintiff is in a protected class; 2) plaintiff was qualified for the position; 3) plaintiff suffered an adverse employment action; and 4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination. The Court concluded that plaintiff could not satisfy the fourth element because he could not show that he was treated less favorably than a similarly situated coworker. Furthermore, the other alleged racially charged comments plaintiff complained of did not prove discrimination because plaintiff was ultimately hired. Indeed, the same

actor who recommended plaintiff's discharge had hired him, therefore, an inference *against* discrimination applied. The remainder of the alleged comments were not made by any individual involved in the decision to discharge plaintiff, and for the most part were stray remarks and did not directly reference race or national origin.

The Court further found that even if plaintiff could prove a *prima facie* case of discrimination, the plaintiff could not prove that the City's legitimate, non-discriminatory reasons for recommending probationary discharge – performance deficiencies – were pretext for discrimination.

Conclusion: This decision demonstrates the employer's ability to continue to operate its business without fear of a costly lawsuit. Of course, it is critical for employers to make all employment related decisions without regard to a protected class, such as race, color, religious creed, age, sex, sexual orientation, pregnancy, marital status, national origin, ancestry, mental disability or physical disability. It is also important for employers to document performance deficiencies throughout an employee's tenure. Proper documentation is often the key element to defeating baseless claims of discrimination.

Cindy Cieslak is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including discrimination, harassment, and wage and hour issues. If you have questions about this legal update, please contact Rose Kallor, LLP at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Carolyn Field, CIRMA Communications Supervisor at cfield@ccm-ct.org.

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