

# CONNECTICUT

## EMPLOYMENT LAW LETTER

Part of your Connecticut Employment Law Service

*Edited by: James M. Sconzo, Jonathan C. Sterling, Brendan N. Gooley, and Amanda M. Brahm of Carlton Fields*

### **CT court reverses decision, drops Hartford probationary police officer's bias claim**

From: Connecticut Employment Law Letter | 02/01/2022

by Brendan N. Gooley, Carlton Fields

by Brendan N. Gooley, Carlton Fields

*In a win for the Hartford Police Department, the Connecticut Appellate Court recently reversed a decision concluding the department had discriminated against one of its officers.*

#### ***Conflicting stories***

Khoa Phan was a probationary officer with the Hartford Police Department. To make a much longer story short, he received generally satisfactory performance ratings along with a few unsatisfactory scores. He claimed he then had negative encounters with a sergeant who made unprofessional and inappropriate comments, including about Phan's Asian/Vietnamese ancestry.

Phan further claimed, in essence, that after making the comments, the sergeant ensured the probationary officer received negative performance reviews from other sergeants who reviewed his work. He subsequently received fewer favorable ratings.

Employers won't be surprised to learn, however, there's another side to the story. The police department claimed Phan was argumentative and confrontational and hadn't been truthful in describing several situations, including an incident in which he had apparently been told to use his taser but failed to do so. As a result of the problems with truthfulness, the police chief later dismissed Phan from his position.

### ***Officer sues over sergeant's alleged comments***

Phan filed a discrimination claim citing the sergeant's purported comments. To make another long story short, a human rights referee determined the police department discriminated against the probationary officer and awarded him more than \$235,000.

Hartford appealed the decision to the Connecticut Superior Court, which upheld the referee's decision. The city then appealed the referee's decision to the Connecticut Appellate Court, which reversed.

### ***Fired officer's evidence comes up short***

The appellate court concluded the evidence didn't support the referee's award to Phan. Although the sergeant's comments were deemed very inappropriate, the court concluded "there was no evidentiary basis to find a causal connection between [the sergeant's] offensive remarks and [the chief's] decision to terminate Phan's employment."

A causal connection between purportedly discriminatory conduct and an adverse employment action (here, Phan's termination) is required. In this case, however, the facts were clear:

- The sergeant didn't have any role in the chief's decision, which was based on reports from other officers regarding, among other things, Phan's honesty; and
- Under Connecticut law, "an employer is not strictly liable for the discriminatory animus of one employee against another employee."

In sum, the court found that, contrary to the referee's and the trial court's decisions, the evidence did "not support the . . . conclusion that [the sergeant's] discriminatory animosity toward Phan motivated or influenced the other officers to complain about Phan's performance" and that there was "simply no evidence in the record . . . to support the referee's conclusion that [the sergeant] influenced the city's decision to terminate [him]." In the alternative, the court also concluded the evidence did "not support the referee's conclusion . . . that the legitimate, nondiscriminatory

reasons for Phan's termination set forth by the city were pretextual" (or a cover-up for discrimination).

### ***Takeaways for employers***

The appellate court's decision is a win for Hartford and good news for employers because it reaffirms:

- Employers aren't strictly liable for misconduct by their employees; and
- Employees must establish a connection between the alleged discrimination and an "adverse employment action" (e.g., termination).

The case also illustrates how frustrating and costly discrimination claims can be. The city prevailed only after an incredibly long process (in which it first lost), which took many years and unquestionably cost a very large sum of money.

*Brendan N. Gooley is an attorney with Carlton Fields in Hartford, Connecticut. You can reach him at [bgooley@carltonfields.com](mailto:bgooley@carltonfields.com).*