Agency

Department of Labor

Subject

Discrimination against Employees Exercising Rights under the Connecticut Occupational Safety and Health Act of 1973

Inclusive Sections

§§ 31-379-1—31-379-22

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Discrimination against Employees Exercising Rights under the Connecticut Occupational Safety and Health Act of 1973

General

Sec. 31-379-1. Introduction

(a) The Connecticut Occupational Safety and Health Act of 1973 (Chapter 571, Section 31-367 through 31-385), hereinafter referred to as the Act, is a state statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the State. By terms of the Act, every person engaged in a business who has employees is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further to comply with occupational safety and health standards promulgated under the Act.

(b) The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Department of Labor, review proceedings before an independent quasi-judicial agency (the Connecticut Occupational Safety and Health Review Commission), and express judicial review are provided by the Act.

(c) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

(d) This part deals essentially with the rights of employees afforded under section 31-379 of the Act. Section 31-379 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

(Effective September 30, 1976)

Sec. 31-379-2. Purpose

The purpose of these regulations is to make available in one place interpretations of the various provisions of section 31-379 of the Act which will guide the Commissioner of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

(Effective September 30, 1976)

Sec. 31-379-3. Complaint procedure

Upon the filing of a complaint pursuant to section 31-379 of the Connecticut General Statutes, the commissioner shall proceed pursuant to section 31-379-15a of the Regulations

of Connecticut State Agencies.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-4. Persons prohibited from discriminating

Section 31-379 of the Connecticut General Statutes is not limited to actions taken by employers against their employees. A person may be charged with discriminatory action against an employee of another person. Any other person in a position to discriminate against an employee may be charged with discriminatory action, including but not limited to, organizations representing employees for collective bargaining purposes and employment agencies.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-5. Persons protected by section 31-379

(a) All employees are afforded the full protection of section 31-379. For purposes of the Act, an employee is defined as "any person engaged in service to an employer in a business of his employer." The Act does not define the term "engaged." However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of section 31-379, is to be based upon economic realities rather than upon common law doctrines and concepts.

(b) For purposes of section 31-379, even an applicant for employment could be considered an employee. Further, because section 31-379 speaks in terms of any employer, it is also clear that the employer need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

(c) In view of the definitions of "employer" and "employee" contained in the Act, employees of the State or political subdivisions are within the contemplated coverage of section 31-379.

(Effective September 30, 1976)

Sec. 31-379-6. Unprotected activities

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of 379 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(b) To establish that a violation of section 31-379 of the Connecticut General Statutes has occurred, the employee's engagement in protected activity is not required to be the sole consideration for a discharge or other adverse action. If protected activity was a substantial reason for the action or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, a violation of section 31-379 of the Connecticut

General Statutes has occurred. Whether a discharge or other adverse action taken against the complainant by a person was because of protected activity shall be determined on the basis of the facts in the particular case.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-7—31-379-8. Reserved

Specific Protections

Sec. 31-379-9. Complaints under or related to the Act

(a) Discharge of, or discrimination against, an employee because the employee has filed "any complaint — under or related to this Act —" is prohibited by section 31-379. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to section 31-374 (f). However, this would not be the only type of complaint protected by section 379. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(b) Complaints registered with other state or local agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to Federal agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be protected against discharge or discrimination caused by a complaint to the employer.

(Effective September 30, 1976)

Sec. 31-379-10. Proceedings under or related to the Act

(a) Proceedings under or related to this chapter include, but are not limited to, inspections of worksites pursuant to section 31-374 of the Connecticut General Statutes, the contesting by an employee of an abatement date pursuant to subsection

(b) of section 31-377 of the Connecticut General Statutes, an employee's initiation of proceedings for promulgation of an occupational safety and health standard pursuant to section 31-372 of the Connecticut General Statutes, an employee's application for modification or revocation of a variance pursuant to subsection (g) of section 31-372 of the Connecticut General Statutes, an employee's judicial challenge to a standard pursuant to subsection (h) of section 31-372 of the Connecticut General Statutes and an employee's appeal of an Occupational Safety and Health Review Commission order pursuant to section 31-378 of the Connecticut General Statutes.

(c) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-11. Testimony

An employee's testimony in any proceeding under or related to chapter 571 of the Connecticut General Statutes is protected by section 31-379 of the Connecticut General Statutes. This protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-12. Exercise of any right afforded by the Act

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 379 also protects employees from discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (section 31-377). Certain other rights exist by necessary implication. For example, employees may request information from the Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b) (1) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to section 31-374 (f) of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of section 379 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger

of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

(Effective September 30, 1976)

Sec. 31-379-13—31-379-14. Reserved

Procedures

Sec. 31-379-15. Filing of complaint for discrimination

(a) **Who may file.** A complaint pursuant to section 31-379 of the Connecticut General Statutes may be filed in writing by the employee or the employee's designated representative.

(b) **Place of filing.** The complaint shall be filed with the labor commissioner no later than one-hundred eighty days after the alleged violation.

(c) If a complaint is filed beyond the one hundred-eighty day period, such period may be tolled by the commissioner on the basis of equity or because of compelling extenuating circumstances, including but not limited to, instances when the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action or instances when the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or the filing of a complaint with another agency are circumstances which shall not toll the one hundred-eighty day period. In the absence of circumstances justifying a tolling of the one hundred-eighty day period, untimely complaints shall not be processed.

(Effective July 9, 1987; Amended December 6, 2001)

Sec. 31-379-15a. The prehearing and hearing process

(a) Upon receipt of the complaint, the Commissioner shall schedule a prehearing conference pursuant to section 31-1-3 of the Regulations of Connecticut State Agencies to be held no later than one month from the date of receipt of the complaint.

(b) If the prehearing conference fails to result in a successful resolution of the complaint, the Commissioner shall promptly schedule and conduct a contested case hearing, pursuant to the Uniform Administrative Procedure Act, Chapter 54 of the Connecticut General Statutes, and the Department of Labor's contested case regulations, Sections 31-1-1 through 31-1-9, inclusive, of the Regulations of Connecticut State Agencies.

(Adopted effective December 6, 2001)

Sec. 31-379-16. Proposed and final decision

(a) Not later than sixty days after the close of evidence, or the filing of briefs, whichever is later, the hearing officer designated to preside over the contested case hearing shall issue a proposed decision pursuant to sections 31-1-1 through 31-1-9, inclusive, of the

Regulations of Connecticut State Agencies and shall notify the parties that any party adversely affected by the proposed decision may file exceptions, present briefs, or request oral argument no later than two weeks from the date of the proposed decision. If the designated hearing officer finds in favor of the complainant, the decision shall contain an award to the complainant of all appropriate relief pursuant to subsection (c) of section 31-379 of the Connecticut General Statutes.

(b) The commissioner shall issue a final decision pursuant to sections 31-1-1 through 31-1-9, inclusive, of the Regulations of Connecticut State Agencies no later than thirty days from the date the proposed decision was issued or no later than thirty days from the receipt of exceptions or the presentation of briefs or the hearing of oral argument, whichever is later.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-17. Withdrawal of complaint

Enforcement of the provisions of section 31-379 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Commissioner's investigation. The Commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

(Effective September 30, 1976)

Sec. 31-379-18. Arbitration or other agency proceedings

(a) **General.**

(1) An employee who files a complaint under section 31-379 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Commissioner's jurisdiction to entertain section 31-379 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Commissioner may file action in the court of common pleas for Hartford county regardless of the pendency of other proceedings.

(2) However, the Commissioner also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 31-379 complaints.

(3) Where a complainant is in fact pursuing remedies other than those provided by section 31-379, postponement of the Commissioner's determination and deferral to the results of such proceedings may be in order.

(b) **Postponement of determination.** Postponement of determination would be justified

where the rights asserted in other proceedings are substantially the same as rights under section 31-379 and those proceedings are not likely to violate the rights guaranteed by section 31-379. The factual issues in such proceedings must be substantially the same as those raised by section 31-379 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(c) **Deferral to outcome of other proceedings.** A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without ajudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 31-379 complaint.

(Effective September 30, 1976)

Sec. 31-379-19—31-379-20. Reserved

Some Special Subjects

Sec. 31-379-21. Walkaround pay disputes

The commissioner recognizes the essential nature of employee participation in walkaround inspections under section 31-374 of the act. Employees constitute a vital source of information to representatives of the commissioner concerning the presence of workplace hazards. Employees should be able to freely exercise their statutory right to participate in walkarounds without fear of economic loss, such as the denial of pay for the time spent assisting OSHA compliance personnel during workplace inspections. Therefore, in order to insure the unimpeded flow of information to the commissioner's inspectors, as well as the unfettered statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time during which they are engaged in walkaround inspections, is discriminatory under section 31-379. In addition, where employees participate in other inspection related activities, such as responding to questions of compliance officers, or participating in the opening and closing conferences, an employer's failure to pay employees for time engaged in these activities, is discriminatory under section 31-379.

(Effective October 5, 1979)

Sec. 31-379-22. Employee refusal to comply with safety rules

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily

be regarded as discriminatory action prohibited by section 31-379. This situation should be distinguished from refusals to work, as discussed in 31-379-12.

(Effective September 30, 1976)