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PALMER, J., concurring. I agree with the result that the majority reaches and most of its analysis, but, in contrast to the majority, I also agree with the plaintiff, Mireille Desrosiers, that General Statutes § 46a-60 (a) (1) reasonably can be construed to prohibit discrimination on the basis of a perceived physical disability. In my view, the statutory bar against discrimination on account of physical disability can fairly be read to mean that an employer is precluded from taking adverse action against an employee by reason of any such disability. Under that construction of the statute, an employee can prevail on a claim brought pursuant to § 46a-60 (a) (1) upon establishing that the employer's reason or motivation for discriminating was improper even when, as in the present case, the employee did not actually suffer from the protected disability.

As the majority notes, under General Statutes § 46a-51 (20), “[m]ental disability” includes “an individual who has a record of, or is regarded as having one or more mental disorders, as defined in . . . the American Psychiatric Association’s ‘Diagnostic and Statistical Manual of Mental Disorders,’” whereas § 46a-51 (15) defines the term “[p]hysically disabled” to include only an “individual who has any chronic physical handicap, infirmity or impairment” Although this definitional difference supports the contention of the defendants Diageo North America, Inc., and Lawrence D. Levine that § 46a-60 (a) (1) denies protection to individuals who are perceived to be physically disabled but, in actuality, are not, it does not mandate that interpretation. In defining the term “mental disability,” the legislature may have taken special care to prohibit discrimination on the basis of a perceived mental disorder because of the difficulty in discerning whether symptoms or conduct associated with that disorder are actually the product of the disorder. Alternatively, the legislature may have used the term “regarded as” in defining “mental disability” merely to indicate that a formal diagnosis of a disability in accordance with the Diagnostic and Statistical Manual of Mental Disorders is not a necessary prerequisite to a discrimination claim predicated on such a disability. In either case, it would not necessarily follow that the legislature intended to permit discrimination on the basis of a perceived physical disability. Because physical disabilities are often more readily apparent or recognizable than mental disabilities, the legislature simply may not have focused on the need to articulate that additional protection expressly with respect to physically disabled employees.

In view of the fact that the language of § 46a-60 (a)

(1) does not plainly and unambiguously foreclose the interpretation advanced by the plaintiff, we look to extratextual evidence to determine whether that interpretation is correct. See General Statutes § 1-2z. I fully agree with the majority that the formally articulated, time-tested and reasonable interpretation of § 46a-60 (a) (1) by the Commission on Human Rights and Opportunities as prohibiting discrimination on the basis of a perceived physical disability is entitled to deference. See, e.g., *Longley v. State Employees Retirement Commission*, 284 Conn. 149, 166, 931 A.2d 890 (2007) (“reaffirm[ing] the principle that courts should accord deference to an agency’s formally articulated interpretation of a statute when that interpretation is both time-tested and reasonable”). In fact, this construction is not just reasonable, but is by far the more reasonable construction in light of the remedial purpose of the Connecticut Fair Employment Practices Act, General Statutes § 46a-51 et seq., to prohibit unfair discrimination in the workplace. I therefore concur.
