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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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VERTEFEUILLE, J., with whom NORCOTT, J., joins, dissenting. Although conceding that ''there exists a general public policy in this state to eliminate all forms of invidious discrimination, including sex discrimination,'' the majority nevertheless concludes, based solely on the definition of ''employer'' in our Fair Employment Practices Act (act); General Statutes § 46a-51 (10);[1] that small employers are exempt from our state's otherwise clearly established public policy against sex discrimination. In other words, the majority concludes, without expressly saying so, that it is the public policy of this state to permit small employers to discriminate against their employees on the basis of sex. I respectfully disagree.

In order to resolve this appeal, we must decide the scope of our state's public policy against sex discrimination. It is undisputed that an employee, like the plaintiff, who brings a common-law action for wrongful discharge pursuant to *Sheets* v. *Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 474–75, 427 A.2d 385 (1980), must allege that her dismissal violated a clear mandate of public policy. That public policy can emanate from state statutes; *Parsons* v. *United Technologies Corp.*, 243 Conn. 66, 80, 700 A.2d 655 (1997); federal statutes; *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 585–86, 693 A.2d 293 (1997); or constitutional provisions. Id., 585 (''*Sheets* and its progeny refer generally to violations of public policy as expressed in explicit . . . constitutional provisions''); see also *State* v. *Rigual*, 256 Conn. 1, 12, 771 A.2d 939 (2001) (clear public policy of state against discrimination on basis of ancestry or national origin reflected in equal protection provision of state constitution); *Santangelo* v. *Santangelo*, 137 Conn. 404, 408, 78 A.2d 245 (1951) (public policy of open courts to every person reflected in state constitution). The plaintiff in this case alleges that her employment with the defendant was terminated on account of her pregnancy in violation of this state's clear public policy against sex discrimination as reflected in various state and federal statutes as well as our state constitution. The defendant, relying on § 46a-51 (10), contends that it is not our state's public policy to permit an employee of a small employer to pursue a civil action for sex discrimination. Our Appellate Court unanimously held ''that there is a public policy against sex discrimination in employment sufficiently expressed in statutory and constitutional law to permit a cause of action for wrongful discharge. . . . Although § 46a-51 (10) excludes many employers from the requirements of the act, our clear public policy as to sex discrimination transcends such an exclusion.'' *Thibodeau* v. *Design Group One Architects, LLC*, 64 Conn. App. 573, 594, 781 A.2d 363 (2001).

The majority's opinion reversing the Appellate Court hinges on the definition of employer in the act, which limits the applicability of the act to employers with three or more employees. See General Statutes § 46a-51 (10); see footnote 1 of this dissent. I am firmly convinced that the legislature did not intend for that lone provision in the act to trump this state's otherwise clear, compelling and pervasive public policy against sex discrimination. I note that under the majority's reasoning, the legislature also must have intended to trump this state's public policy against discrimination on the basis of race and other criteria when it defined employer as it did for the purposes of the act. See General Statutes § 46a-51 (10). The majority's decision therefore will immunize small employers such as the defendant from wrongful discharge claims alleging discrimination on the basis of race as well as gender, because the act also prohibits, inter alia, racial discrimination. See General Statutes § 46a-60. I am not persuaded that the legislature intended such a result.

I further believe that the majority dismisses too easily the breadth of this state's policy against sex discrimination. As the concurrence in the Appellate Court opinion appropriately recognized, this state has a ''strong, clear and fundamental public policy'' against sex discrimination. *Thibodeau* v. *Design Group One Architects, LLC,* supra, 64 Conn. App. 595–96 (*Flynn, J.*, concurring). Our legislature has committed itself clearly and firmly to the eradication of discrimination on the basis of sex by enacting a comprehensive array of statutes that prohibit sex discrimination in various forms and venues. See General Statutes § 31-75 (prohibiting discriminatory employment compensation practices); General Statutes § 38a-358 (prohibiting discriminatory practices by automobile insurers); General Statutes § 46a-58 (prohibiting discriminatory deprivation of rights); General Statutes § 46a-59 (prohibiting discriminatory practices by professional and occupational associations); General Statutes § 46a-60 (prohibiting employment discrimination); General Statutes § 46a-64 (prohibiting discriminatory public accommodations practices); General Statutes § 46a-64c (prohibiting discriminatory housing practices); General Statutes § 46a-66 (prohibiting discriminatory credit practices); General Statutes § 46a-70 (guaranteeing equal employment opportunities in state agencies); General Statutes § 46a-71 (prohibiting discriminatory practices by state agencies); General Statutes § 46a-72 (prohibiting discriminatory job placement by state agencies); General Statutes § 46a-73 (prohibiting discriminatory state licensing and charter procedures); General Statutes § 46a-74 (prohibiting state agencies from permitting discriminatory practices in professional or occupational associations, public accommodations, or housing); General Statutes § 46a-75 (prohibiting discrimination in educational, vocational and job training programs); General Statutes

§ 46a-76 (prohibiting discriminatory allocation of state benefits). In addition, the equal protection clause of our state constitution; Conn. Const., art. I, § 20; was amended by the legislature in 1974 to add sex as a protected class. See Conn. Const., amend. V. Our equal protection clause now declares that no person shall be discriminated against on the basis of sex.[2]

Moreover, in 1973, our legislature passed a resolution ratifying the proposed equal rights amendment to the constitution of the United States,[3] becoming one of only thirty states to do so,[4] further evidencing this state's strong policy against sex discrimination. More than twenty-five years ago, this court found that ''this mass of legislation evidences a firm commitment . . . to do away with sex discrimination altogether.'' *Evening Sentinel* v. *National Organization for Women*, 168 Conn. 26, 34, 357 A.2d 498 (1975).

Federal laws provide further evidence of a well established public policy against sex discrimination. Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e et seq.; prohibits employers from discriminating on the basis of sex.[5] The Family and Medical Leave Act of 1993; 42 U.S.C. § 2601 et seq.; requires employers to grant employees a twelve week leave of absence following the birth of a child.[6] The Pregnancy Discrimination Act of 1978; Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e [k]); amended Title VII to prohibit discrimination on the basis of pregnancy.[7]

The majority concludes that our general public policy against sex discrimination, as reflected in these statutes and our equal protection clause, cannot prevail over the specific statutory exemption of § 46a-51 (10). The majority states: ''As we repeatedly have stated in seeking to ascertain legislative intent from more than one statutory pronouncement on a particular subject, specific terms in a statute covering the given subject matter will prevail over the more general language of the same or another statute that otherwise might be controlling.'' Although this correctly states a rule of statutory construction, statutory construction is not the issue before us. The question in this case is whether a single statutory definition was intended to override the otherwise overwhelming evidence of this state's clear public policy against sex discrimination. I do not believe the legislature evinced an intention, by its exemption of small employers from the act, to trump the clear and unequivocal public policy against sex discrimination that is reflected by the comprehensive legislative scheme seeking to root out such discrimination. As the Supreme Court of Ohio aptly stated: ''In cases of *multiple*-source public policy, the statute containing the right and remedy will not foreclose recognition of the tort on the basis of some other source of public policy, unless it was the legislature's intent in enacting the statute to preempt common-law remedies.'' (Emphasis in origi-

nal.) *Collins* v. *Rizkana*, 73 Ohio St. 3d 65, 73, 652 N.E.2d 653 (1995). Section 46a-51 (10) does not apply beyond the borders of the act and its adoption by the legislature does not reveal any intention to bar common-law claims based on gender discrimination. Had the legislature intended to preclude such common-law claims, it certainly knew how to make its intention clear. See, e.g., General Statutes § 31-275 et seq. (Workers' Compensation Act);[8] General Statutes § 52-572n (Connecticut product liability statute).[9]

This state's concerted effort to eliminate discrimination on the basis of gender reflects a fundamental public policy that is broader than the remedies afforded by any one statute. The bare fact that the legislature excluded employers such as the defendant from the provisions of the act does not, without more, evince a clear legislative intent to contravene this state's long-standing public policy prohibiting sex discrimination. On the contrary, the legislative history reveals that the act was intended to further this state's fight against discrimination, including discrimination on the basis of sex.[10] The fact that the act does not apply to all employers does not diminish that public policy, but only demonstrates a legislative determination to limit the reach of that statute and its remedies. See *Molesworth* v. *Brandon*, 341 Md. 621, 637, 672 A.2d 608 (1996); *Collins* v. *Rizkana*, supra, 73 Ohio St. 3d 73–74; *Roberts* v. *Dudley*, 140 Wash. 2d 58, 70, 993 P.2d 901 (2000); *Williamson* v. *Greene*, 200 W. Va. 421, 429–31, 490 S.E.2d 23 (1997).

The highest courts of several states have considered and rejected the argument the majority now embraces. For example, in *Roberts* v. *Dudley*, supra, 140 Wash. 2d 60, the Supreme Court of Washington considered whether the exemption of small employers from Washington's employment discrimination statute also exempted such employers from common-law wrongful discharge claims. In holding that common-law claims were not barred, the court stated that the statutory exemption ''is not in itself an expression of the public policy, and the definition of 'employer' for the purpose of applying the statutory remedy does not alter or otherwise undo to any degree this state's public policy against employment discrimination. . . . If it is argued that the exclusion of small employers from the statutory remedy is itself a public policy, that policy is simply to limit the statutory remedy, but is not an affirmative policy to '[exempt] small employers from [common-law] discrimination suits.' '' (Citation omitted.) Id., 70; see also *Molesworth* v. *Brandon*, supra, 341 Md. 637; *Collins* v. *Rizkana*, supra, 73 Ohio St. 3d 73–74; *Williamson* v. *Greene*, supra, 200 W. Va. 429–31. I find this reasoning persuasive.

I am not persuaded by the majority's attempt to distinguish *Roberts* and the other out-of-state cases relied on by the plaintiff. In each of those cases, the court held

that an at-will employee could maintain a common-law claim for wrongful discharge against her employer even though the employer was specifically excluded from the provisions of the particular state's employment discrimination statute. Although the statutes under consideration in those cases were not identical to our act, the differences are of little import. The majority places great weight on the fact that the employment discrimination statutes at issue in *Molesworth*, *Roberts* and *Williamson*, respectively, contained language explicitly declaring a broad public policy to eliminate sex discrimination in employment. Such a statutory preamble, however, does not necessarily equate to a public policy more comprehensive or more fundamental than the policy of this state. As the Appellate Court appropriately recognized: ''The existence of a public policy does not hinge on the use of precise phraseology such as 'it is the public policy of this state.' '' *Thibodeau* v. *Design Group One Architects, LLC*, supra, 64 Conn. App. 592. The Supreme Court of Ohio recognized this in *Collins* v. *Rizkana*, supra, 73 Ohio St. 3d 70. The court in *Collins* held that the existence of a clause in Ohio's employment discrimination statute expressly prescribing the state's public policy was not the determinative factor of whether a public policy in fact existed. Rather, the court emphasized that the public policy emanating from two other statutes that did not contain such an explicit declaration was ''independently sufficient to allow for the recognition of a cause of action for wrongful discharge in violation of public policy.'' Id.

Furthermore, the majority's emphasis on these explicit declarations of public policy is contradicted both by the majority's own concession that there exists in this state ''a general public policy to eliminate sex discrimination,'' and by earlier cases decided by this court. This court previously has found a public policy sufficient to support a common-law claim for wrongful discharge in a state statute that promotes consumer protection by regulating product labeling; *Sheets* v. *Teddy's Frosted Foods, Inc.*, supra, 179 Conn. 480; in two state statutes that regulate workplace safety; *Parsons* v. *United Technologies Corp.*, supra, 243 Conn. 80; and in a federal statute that bars fraud in government contracts. *Faulkner* v. *United Technologies Corp.*, supra, 240 Conn. 577–78, 585–86. None of those decisions hinged on the existence of a statutory declaration explicitly defining the public policy embodied by the statute in question.

The majority also attempts to discredit the plaintiff's reliance on the equal protection clause of our state constitution. See footnote 2 of this opinion. The majority concludes that the state equal protection clause has no bearing on the present case because it applies only to state action. This conclusion mischaracterizes the present case and the nature of claims brought pursuant to *Sheets*. When considering a claim under *Sheets*, we

properly look to see whether the plaintiff has demonstrated the existence of a clear mandate of public policy upon which a common-law cause of action may be predicated. *Sheets* v. *Teddy's Frosted Foods, Inc.*, supra, 179 Conn. 474–75. The public policy can emanate from statutes, both state and federal, as well as constitutional provisions. See *Faulkner* v. *United Technologies Corp.*, supra, 240 Conn. 585 ("*Sheets* and its progeny refer generally to violations of public policy as expressed in explicit . . . constitutional provisions"); see also *State* v. *Rigual*, supra, 256 Conn. 12 (clear public policy of state reflected in equal protection provision of state constitution); *Santangelo* v. *Santangelo*, supra, 137 Conn. 408 (public policy reflected in state constitution). A plaintiff does not have to show that her discharge violated one of those statutes or constitutional provisions, but only that her discharge violated the *public policy* reflected in that legislation. In the present case, the plaintiff is not alleging that her dismissal violated the equal protection clause of our state constitution, as such a claim clearly would fail for lack of state action. Rather, the plaintiff is alleging that her discharge violated the public policy against sex discrimination that is reflected in that constitutional provision, as well as nearly twenty state and federal statutes. As one of the guideposts we follow in discerning this state's public policy, the equal protection clause is indispensable to a proper resolution of this case. See *State* v. *Rigual*, supra, 12; *Faulkner* v. *United Technologies Corp.*, supra, 585; *Santangelo* v. *Santangelo*, supra, 408; see also *Rojo* v. *Kliger*, 52 Cal. 3d 65, 90, 801 P.2d 373, 276 Cal. Rptr. 130 (1990) (equal protection provision in state constitution "unquestionably reflects a fundamental *public policy* against discrimination in employment . . . on account of sex" [emphasis in original]); *Molesworth* v. *Brandon*, supra, 341 Md. 632 (state statutes, executive order and constitutional amendment together are "strong evidence of legislative intent to end discrimination based on sex"); *Collins* v. *Rizkana*, supra, 73 Ohio St. 3d 69 ("[c]lear public policy sufficient to justify an exception to the employment-at-will doctrine is not limited to public policy expressed by the [legislature] in the form of statutory enactments, but may also be discerned as a matter of law based on other sources, such as the Constitutions of [the state] and the United States" [internal quotation marks omitted]); *Roberts* v. *Dudley*, supra, 140 Wash. 2d 66 (constitutional provision can represent source of public policy); *Williamson* v. *Greene*, supra, 200 W. Va. 429 (same).

I am also concerned that the majority's decision in this case may be construed to vitiate the exception to the at-will employment doctrine that we recognized in *Sheets*. In refusing to recognize the plaintiff's common-law cause of action, the majority relies in part on *Burnham* v. *Karl & Gelb, P.C.*, 252 Conn. 153, 745 A.2d 178 (2000). Inasmuch as the majority relies on that case for

the proposition that the plaintiff may not maintain her common-law action absent a showing that her discharge violated an express statutory provision, the majority's reliance is misplaced. First, although in *Burnham* we denied the plaintiff's common-law claim for wrongful discharge, we rested our decision in part on the fact that the plaintiff had statutory remedies available to her under both state and federal law. In this case, the plaintiff has no such statutory remedies. Second, this court never has held that a plaintiff must establish either a statutory or a constitutional violation to maintain a common-law cause of action for wrongful discharge. In fact, in *Sheets* the court expressly declined to make such a violation a requirement for the cause of action. *Sheets* v. *Teddy's Frosted Foods, Inc.*, supra, 179 Conn. 480. To establish such a requirement today would eviscerate *Sheets* and its progeny and would skew greatly the balance between employers and employees that those cases have so diligently maintained.

I would conclude that, despite the definition of employer in § 46a-51 (10), there is in this state a clear, well established public policy against sex discrimination on which the plaintiff may rely to establish a cause of action for wrongful discharge.

Accordingly, I respectfully dissent.

[1] General Statutes § 46a-51 provides in relevant part: "As used in section 4a-60a and this chapter . . .

"(10) 'Employer' includes the state and all political subdivisions thereof and means any person or employer with three or more persons in his employ . . . ."

[2] Article first, § 20, of the Connecticut constitution, as amended by articles five and twenty-one of the amendments, provides: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."

[3] House J.R. No. 1, January Sess., 1973 Public Acts, vol. 1, p. LXXIV. Section 1 of the federal equal rights amendment provided: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." H.R.J. Res. No. 208, 92d Cong., 2d Sess. (1972)

[4] Thirty-five states had ratified the proposed amendment initially, but five states subsequently voted to rescind their ratification. 2 Encyclopedia of the American Constitution (L. Levy et al. eds., 2000) p. 918.

[5] Title 42 of the United States Code, § 2000e-2 (a), provides in relevant part: "It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . ."

[6] Title 29 of the United States Code, § 2612 (a) (1), provides in relevant part: "Subject to section 2613 of this title, an eligible employee shall be entitled to a total of [twelve] workweeks of leave during any [twelve month] period for one or more of the following:

"(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter. . . ."

[7] Title 42 of the United States Code, § 2000e (k), provides in relevant part: "The terms 'because of sex' or 'on the basis of sex' [as used in Title VII] include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . . ."

[8] General Statutes § 31-284 (a) provides in relevant part: "An employer who complies with the requirements of subsection (b) of this section *shall not be liable for any action for damages* on account of personal injury sustained by an employee arising out of and in the course of his employment

or on account of death resulting from personal injury so sustained . . . .'' (Emphasis added.)

[9] General Statutes § 52-572n (a) provides in relevant part: ''A product liability claim . . . may be asserted *and shall be in lieu of all other claims against product sellers*, including actions of negligence, strict liability and warranty, for harm caused by a product.'' (Emphasis added.)

In *Winslow* v. *Lewis-Shepard, Inc.*, 212 Conn. 462, 470–71, 562 A.2d 517 (1989), this court concluded that the language of § 52-572n (a) alone did not unambiguously express a legislative intent to preclude common-law product liability claims. On the basis of the statute's legislative history, however, the court held that the legislature had intended for § 52-572n to preclude common-law product liability claims. In light of our conclusion in *Winslow* that the language of § 52-572n alone did not express clearly whether the legislature had intended to preclude all common-law claims for product liability, the majority's conclusion in this case that § 46a-51 (10) evinced an intent by the legislature to preclude all common-law claims for employment discrimination against small employers is untenable, as § 46a-51 (10) is silent on the matter.

[10] The Appellate Court's thoughtful and comprehensive opinion amply demonstrates this. ''We do note, however, that the legislative history of the 1967 amendment, which added sex as a classification, supports our finding of a public policy against sex discrimination embodied in that act. Representative James J. Kennelly stated: 'This bill is in furtherance of this legislature's commitment to true equality of opportunity [in] employment. No period in Connecticut legislative achievements has been more enlightened, or more dedicated in the field of human rights . . . . This bill represents continued and expanded implementation of sound and realistic ''human rights'' legislation and I respectfully urge its adoption.' 12 H.R. Proc., Pt. 6, 1967 Sess., pp. 2567–68. Representative Thomas F. Dowd, Jr., stated: 'We on this side of the aisle are very pleased to support this bill for further testimony to Connecticut's commitment to non-discriminatory practices in what ever form.' Id., p. 2568. Although we find neither of those comments dispositive of the issue, they support a general public policy in Connecticut against sex discrimination.'' *Thibodeau* v. *Design Group One Architects, LLC*, supra, 64 Conn. App. 584–85 n.8.