



Episode 45: “What to Know About the CT Commission on Human Rights and Opportunities,” With Dan Elliott

Speakers: Ari Kwiatkowski and Dan Elliott, Barclay Damon

[Ari Kwiatkowski]: Hi, everyone, this is a *Barclay Damon Live* broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

[Ari]: Hey guys, welcome to Episode 45, “What to Know About the Connecticut CHRO,” with Dan Elliott. I first of all want to say I can’t believe that we’re 45 episodes in and quickly approaching episode 50. But putting that aside. For the next couple of weeks, we’re going to switch it up. Most of our podcasts thus far have really focused on New York law and federal law, and, you know, I’m welcoming Dan today, who is a partner in our New Haven, Connecticut, office, because we are going to switch to Connecticut law. So, Dan, welcome.

[Dan]: Thank you. Great to be here.

[Ari]: And I’m so glad to have you. To our listeners, Dan, as I mentioned, is in our New Haven office. He brings to the table decades of experience in representing employers in litigation matters, in complaints before the PRO and the EEOC and counseling employees on a variety of work-related matters. So Dan, I know that you are the absolute best guest for us to have to tell our listeners about Connecticut law.

[Dan]: Thank you.

[Ari]: And before we dig in and I am going to ask you to share a personal, professional, fun fact about yourself. Our listeners know, I always ask the guests, any of my guests to share something about themselves. So I’m going to turn it over to you.

[Dan]: Sure. Well, I’m not that fun, but I can say that one fun fact about me is you might not realize it from my last name, but I’m mostly Italian-American and I am a former president of the Connecticut Italian-American Bar Association.

[Ari]: Awesome. And Dan, it’s my understanding, just to our listeners, Dan and I always kind of get together and share a drink at any of our internal events. But Dan, it’s my understanding that you have traveled to Italy quite a few times.

[Dan]: I’ve been there a number of times, quite fortuitously for me. My maternal family is from the Amalfi Coast, so I’ve been there a number of times. I’ve had the good fortune of being able to research my family and the archives there. I traced them all the way back to the 1700s. So that’s one of things outside of work.

[Ari]: Very cool. And I think, Dan, our listeners have... a lot of our guests and myself talk about our travels. So I do wish this could be a travel podcast and we’ll have to maybe work that out between us later on. But unfortunately, it is not. So let’s dig into the substance and let’s kind of kick it off. So to our listeners, you know, if you’ve been listening to our discrimination segment, a lot of it has been under New York law. We’ve had guests from the Division of Human Rights and other attorneys on. And today we’re going to talk about Connecticut law and the CHRO. And can you tell our listeners briefly just what is that, the CHRO?

[Dan]: Sure. So the CHRO is the Connecticut Commission on Human Rights and Opportunities. It's a state agency here in Connecticut which is statutorily empowered to monitor, to investigate, and to enforce our human rights and anti-discrimination laws. So for the New York folks, the best way to think about it is it's just like the DHR, the Division of Human Rights.

[Ari]: I think that's a helpful comparison for our listeners, Dan. So as you mentioned, the CHRO enforces anti-discrimination laws in employment. And I'm going to assume, I'm just going out on a limb, that like in New York with the Division of Human Rights, employees can file a complaint with the CHRO. Is that right?

[Dan]: Absolutely.

[Ari]: Can you tell our listeners how long an employee has to do that?

[Dan]: Sure. Good question. And that's something that's changed recently. So before October 1 of 2021, if the alleged violation occurred before that time, the employee would have had 180 days to file their complaint. Now, with regard to alleged discriminatory practices that occurred after October of 2021, the deadline is 300 days, which brings Connecticut more in line with the federal agency, the EEOC.

[Ari]: Good to know. And I did not know that it was kind of a timely question, Dan, because it sounds like there's been some changes and maybe there's been a bit of a shakeup recently in Connecticut.

[Dan]: That's right.

[Ari]: So we talked about a complaint. And I think probably the first question to ask for our employers, listeners who are in Connecticut is: How long does an employer who is named in a complaint have to respond?

[Dan]: Sure. So once the employer receives the complaint, by statute, they will have 30 days to respond. And the regulations do provide for a 15-day extension of time if the employer requests it and if they show good cause for the extension.

[Ari]: So, Dan, one of the things that I've heard referenced from clients and I know our attorneys in our office in Connecticut, is this pre-answer conciliation process. Can you kind of explain what that is? And what that's all about?

[Dan]: Sure. So the best way to think of pre-answer conciliation is it's essentially an early mediation. When the employer receives notice that they're being served with a complaint, typically, there will be a cover letter from the CHRO explaining that this is an option, and the deadline that the employer will have to request pre-answer conciliation is ten days after the service of the complaint. If it is requested, then the employer's deadline to file an answer to the complaint will be told.

[Ari]: Wow. So ten days is a pretty quick turnaround.

[Dan]: It is a pretty quick turnaround. It's a good option if the employer goes into this process knowing that settlement is the desired outcome. It can cut down on a lot of time and a lot of cost for the employer.

[Ari]: Got it. So basically, it's a fast track to a mediation.

[Dan]: Exactly.

[Ari]: Nice. So, Dan, let's assume that an employer receives a complaint and they're maybe not interested in settlement or don't know that they are. How does... or what are the possible ways that an employer can respond to that complaint?

[Dan]: So the employer will be required to respond to the complaint if it does not elect for pre-answer conciliation. And their deadline to respond will be 30 days from the date that they received the complaint. There is an option for an extension of time of 15 days if the employer requests it and shows good cause.

[Ari]: Got it. So what is the what does the answer look like, Dan? So in New York, you know, basically, as you know, because I know that you practice in New York, you handle charges with the division as well. But in the division to respond to a complaint, you file a what we call the position statement. Is it similar in Connecticut?

[Dan]: Well, there are some distinctions. So there are two things that the employer is absolutely required to file here in Connecticut. The first would be a verified answer to the complaint. And when we receive a complaint, typically the way you'll see it formatted is in numbered paragraphs. So the employer will be required to respond. Either admit, deny, or insufficient knowledge as to each numbered paragraph. The answer must be verified by the client. So a representative of the employer must sign off on the answer. It's not sufficient for us as the attorneys to sign it. So that's the first thing that's...

[Ari]: Interesting...That's definitely a little different than New York, because normally we you know, the attorney can sign on behalf of the client. But you pointed that out, Dan, because that's a little different.

[Dan]: Right. So that's the first thing that needs to be filed. Second, you'll see with each complaint that served, there will be something called the Schedule A Request for Information. And this is typically 15 questions, written questions the CHRO poses to the employer. They're sent out along with the complaint. And the employer is required to respond to them and to submit their responses along with the verified answer. So those are the two things that have to be filed. So a position statement is not required here in Connecticut as long as you file your verified answer and you respond to the Schedule A requests, you've done your statutory duty. Now, even though a position statement is not required, it is permissible. And I would say that it's oftentimes a good opportunity for the employer to explain their position in more detail than they otherwise would be able to, merely by responding to the numbered paragraphs in a complaint so not required, but permissible.

[Ari]: Good to know, Dan. So just a couple of follow-ups. I know that you mentioned the Schedule A and it sounds like that's something that goes out with every complaint or the items that are requested from CHRO are usually pretty standard. Or are there does the CHRO usual request similar items on in relation to every complaint or is it kind of individualized or what information are they looking for?

[Dan]: It's not individualized. It's a form that will go out with each and every complaint. There's typically 15 questions and it encompasses an array of information about the employer generally, and about the employee and the circumstances of his or her employment.

[Ari]: Got it. Now, I know you mentioned that the position statement is basically optional in Connecticut. In your experience, is that something that you would recommend an employer draft and put together and submit? And why would you recommend that for an employer, even though it's not required?

[Dan]: I would recommend it in most cases because as I said, with regard to the verified answers of the complaint, the employer is reacting to what the employee has alleged, or either admitting it, denying it, or stating that we have insufficient knowledge to respond. With a position statement that's an opportunity to give a little more color commentary and to explain some factors that may not be necessarily raised in the complaint.

[Ari]: Right. And I guess it—I think you and I talked about this off-line, Dan—but I think from what you told me and what I remember, it actually is kind of going above and beyond. But if you are confident in your position, it's just one more way to tell CHRO why discrimination did not occur, I guess.

[Dan]: Absolutely right.

[Ari]: Great. So in New York, Dan, and we talked about this with the representatives we had from the Division of Human Rights on the podcast. But, you know, in New York, the employer can the employee, excuse me, gets a copy of what the employer submits, has the opportunity to kind of respond. And then, you know, the employer can even kind of have what we call in New York a rebuttal or a response to the employee's response. So a little bit confusing. But can you tell us in Connecticut whether information is shared between the parties like that?

[Dan]: It absolutely is. So when we, as the employer, responds to a complaint, we are required to file it, of course, with the CHRO, and we are also required to certify that copies of everything that we filed with the CHRO have been sent to the employee. So the employee will see everything that we filed.

[Ari]: Got it. And, you know, as I mentioned in New York, basically the employee has the opportunity to submit a written commentary or written submission on what the employee submits...is that similar in Connecticut as well?

[Dan]: Absolutely. The regulations do give the employee an opportunity to file a rebuttal or a reply to our answer.

[Ari]: Got it. Okay. So that sounds like it's pretty similar between the two states.

[Dan]: Mm-hmm.

[Ari]: So, Dan, one of the things that I have heard attorneys in our Connecticut office mention when we've kind of talked about this and done some brainstorming sessions, is a "case assessment review." And this isn't something that is really done at the Division of Human Rights in New York. So can you tell our listeners who have employees in Connecticut or, you know, employees in both states, what is the case assessment review?

[Dan]: Sure. So after the employer files its answer, the CHRO will engage in what's called the case assessment review, CAR for short. And what that is, is that the agency will have a period of 60 days whether or not to retain the complaint for investigation or to dismiss it. And the statute lays out for us the reasons why a complaint can be dismissed at the CAR stage, and that's if the complaint is frivolous on its face. If the employer... if the provisions of the anti-discrimination laws do not apply to a particular employer, or if the agency determines that there is no reasonable possibility that the complaint will result in a finding of reasonable cause.

[Ari]: Got it. So from what I'm hearing, Dan, it kind of sounds like the case assessment review is a bit of like a screening process just to see maybe if the employer is covered by the law or as you mentioned, maybe the complaint wasn't timely filed. Just kind of more preliminary things.

[Dan]: That's exactly right. And I should note that if the agency determines at the CAR stage that a complaint should be dismissed, the complainant will receive a release of jurisdiction to pursue their claim in court.

[Ari]: Got it. So basically in New York has kind of a similar process, although without the case assessment review, but basically, once the employee receives that, they're free to sue in court.

[Dan]: Right.

[Ari]: Got it. All right, Dan, well, I think that this has been a great primer. We've kind of I think, given our listeners an introduction, at least, to how the CHRO operates. And I think it's a good time to break for this week. But before we do any famous last words or anything you think maybe we missed before we kind of get into mediation and investigation next?

[Dan]: Yeah, I do think there's one important thing I should point out, and that's something that's what we call the Purcell's notice. The CHRO will send out every with every complaint, there will be something called a Purcell's notice. And that is named after a case that was decided by the Connecticut Supreme Court in 2015 called Purcell's. And that holds that in order to practice before an administrative agency in Connecticut, such

as the CHRO, an attorney, in-house counsel, has to be admitted in Connecticut. So the CHRO will inform the employer, right with the service of the complaint, that you need an attorney who is license to practice in Connecticut or otherwise an attorney who will apply for pro hac vice admission before the CHRO. So that's something important to keep in mind as well.

[Ari]: Definitely, yes. And I had never heard of that, Dan, so I'm very glad that you pointed it out. All right. Well, I think this is a good place to break. To our listeners, tune in next week. We will be back with Dan and we will be chugging along on our hypothetical complaint filed with the CHRO. And Dan will talk to us about the investigation, mediation, and basically what happens through the process. So, Dan, thanks so much and look forward to seeing you next week.

[Dan]: My pleasure.

[Ari]: All right. Talk soon.

[Ari]: The *Labor & Employment Podcast* is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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