PULLMAN &COMLEY

You Can Choose Your Friends, But ….

Working Together

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The U.S. Constitution protects a government employee from retaliation by his or her governmental employer because the employee exercised rights protected by the First Amendment. Some years ago the Connecticut Legislature decided to extend similar protection to private employment, which is not directly covered by the Constitution. Connecticut General Statute 31-51q prohibits any employer, public or private, from discharging or disciplining an employee on account of the exercise by the employee of rights guaranteed by the First Amendment and by similar provisions of the state constitution.

The purpose of the statute was to protect an employee's right to free speech as a citizen. But once a right is created by statute, there is often a tendency in our legal system to try to expand it beyond its original boundaries. A recent decision in the Hartford Superior Court illustrates such an attempted expansion, which was ultimately rejected.

The plaintiff in Rataic v. Dutch Point Credit Union, Inc. relied on the recognition by courts of the right to "freedom of association" as a fundamental right under the First Amendment. The plaintiff had quit her job, but alleged that she had been forced to do so by intolerable conduct on the part of the new CEO of her company, which she attributed to his resentment of her friendship with the former CEO who had retired. The plaintiff claimed that her friendship with the former CEO was an association entitled to constitutional protection, and therefore that the termination of her employment (which she characterized as a constructive discharge) was a violation of Section 31-51q.

The defendant challenged this claim using the procedure known as a "motion to strike," under which the court will assume that the factual allegations of a complaint are true, but will determine if the allegations support a legal claim. The court decided that the constitutional right of association is limited to intimate relationships, such as marriage and family, or to organized associations for political, social, and cultural goals, and the like. An ordinary personal friendship does not constitute protected association under either the First Amendment or the state Constitution.

Because the court rejected the plaintiff's legal theory, the defendant in this case did not have to answer either the accusation of constructive discharge or the accusation of resentment of a friendship. Nevertheless, the possibility of having to deal with such accusations should encourage employers to have demonstrably neutral business reasons, supported by documentation, when making decisions about a problematic employee.