



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Labor and Public Employees Committee

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Good afternoon, Senator Prague, Representative Ryan and members of the Committee. My name is Nancy Alisberg, and I am Managing Attorney at the Office of Protection and Advocacy for Persons with Disabilities. Thank you for this opportunity to comment on **Raised Bill No. 5647, AN ACT CONCERNING CERTAIN ELIGIBILITY REQUIREMENTS FOR UNEMPLOYMENT COMPENSATION CLAIMANTS WITH A DISABILITY**. Our Office supports the concept behind this bill, but we believe it needs further work in order to comport with definitions already in State law, and with the Americans with Disabilities Act.

This Bill reflects an effort to codify the June 6, 2005 decision of the Connecticut Superior Court in Fullerton and Cocchiola v. Administrator, State of Connecticut Unemployment Compensation Act. In these cases, Judge Michael Sheldon ruled that § 31-235-6(a) of the Regulations of Connecticut State Agencies violated Conn. Gen. Stat.

§ 46a-76. The regulation in question provided that for a claimant to be eligible for unemployment compensation, that individual must be available for full-time work. Both Ms. Fullerton and Ms. Cocchiola have disabilities that limit their ability to work full-time, and thus they were both denied unemployment compensation. Judge Sheldon found that the regulation discriminated against them because of their disabilities.

While these cases are now on appeal to the Connecticut Supreme Court, Raised Bill No. 5647 is a laudable attempt to rectify this issue. However, the language of subsection (c) of the Bill does not comport with the requirements of Conn. Gen. Stat. § 46a-51. The Bill asks the individual to provide documentation that the disability is "permanent or long-term in nature." Physical disability is defined in 46a-51(15) as referring to "any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device." Additionally, "mental disability" in 46a-51(20) refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders". Nowhere in these statutes is the word "permanent" used. The case law on this issue supports the concept that "chronic" does not equate with "permanence." My written testimony contains references to that case law.¹

¹ Caruso v. Siemens Business Systems, Inc., 392 F.3d 66, 69 (2d Cir. 2004). The "chronic" standard imposes a lower threshold than is necessary to establish a disability under the ADA. Shaw v. Greenwich Anesthesiology Associates, Inc., 137 F.Supp.2d 48, 65 (D.Conn. 2001); Beason v. United Technologies Corp., 337 F.3d 271, 277 (2d Cir. 2003). Various decisions both in the courts and the CHRO have found conditions to be disabling that are not necessarily permanent. See, e.g., Adriani

It is also important to recognize that the provision in Raised Bill 5647 requiring that an individual must be "available for work at least sixteen hours per week" violates the Americans with Disabilities Act. The ADA requires that disabilities must be evaluated with respect to each individual. 42 U.S.C. § 12102(2)(A). The Supreme Court of the United States has long upheld this principle.² Therefore, a state statute requiring that all individuals with disabilities be available to work for 16 hours per week would violate the "individualized assessment" provisions of the ADA.

Additionally, OPA submits that the final section of subsection (c) incorrectly places the burden on claimants to prove that their disability does not effectively remove them from the labor force. While the ADA requires that individuals bear the burden of proof as to whether or not they have a disability, it is employers who bear the burden of proving that it would be an undue burden to provide an accommodation so that those individuals can be employed. 42 U.S.C. 12112(b)(5)(A).³ This is analogous to subsection (c)(2) where claimants are being asked to prove that their disability does not remove them from the labor force. OPA suggests that the language be amended to place that burden on the administrator.

Finally, CHRO has submitted amended language for this provision of Raised Bill 5647. That language is attached to my written testimony, and OPA joins with CHRO in requesting that this language be considered by the committee.

Thank you for your attention. If you have any questions, I will try to answer them.

v. CHRO, 220 Conn. 307, 314 n.7 (1991)(hypertension that flared up "in recent months" due to on-the-job stress was disability); Ann Howard's Restaurant, Inc. v. CHRO, 237 Conn. 209 (1996)(bacterial pneumonia); CHRO v. Ethan Allen Inn, Docket Nos. 292263 and 292285, J.D. of Danbury at Danbury (August 15, 1989)(employee whose breast cancer was successfully removed and was cancer-free was disabled, because of possibility of remission and need for 10 years of follow-up); Gillman Bros. v. CHRO, 1997 Conn. Super. LEXIS 1211 (May 13, 1997)(carpal tunnel syndrome that "waxed and waned"); Tordonato v. Colt's Mfg. Co., 2000 Conn. Super. LEXIS 3615 (December 26, 2000) (employee who had heart attack 5 years before being laid off and who had heart condition was disabled); Civil Service Commission v. CHRO, 1994 Conn. Super. LEXIS 304 (February 7, 1994)(high cholesterol); Kuhn v. People's Bank, 2001 Conn. Super. LEXIS 3451 (November 29, 2001)(alcoholism); Jacobs v. Monso Rubber Division, CHRO No. FEP (PD) (June 30, 1975)(chemical sensitivity); CHRO ex rel. Nobili v. David E. Purdy & Co., CHRO No. 0120389 (February 6, 2004)(sinusitis). The CHRO can supply any of these decisions upon request.

² Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184, 199 (2002); Sutton v. United Airlines, 527 U.S. 471, 483 (1999); Bragdon v. Abbott, 524 U.S. 624, 657 (1998) (Rehnquist J. concurring); Capobianco v. City of New York, 422 F.3d 47, 59-60 (2nd Cir. 2005).

³ U.S. Airways, Inc. v. Barnett, 535 U.S. 391, 396 (2002).

CHRO AMENDMENT TO SUBSECTION C

(c) Notwithstanding the provisions of subsection (a) or (b) of this section, an unemployed individual may limit his or her availability for work to part-time employment, provided (1) the individual provides documentation from a licensed physician that the individual has a physical or mental disability, as defined in sections 46a-51(15) or 46a-51(20) of the general statutes, that limits the individual's ability perform full-time employment, and (2) the administrator, after an individualized assessment of the limitation, finds that such limitation does not effectively remove such individual from the labor force.