2015 WL 3687707
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
Judicial District of Waterbury.

Ronald Schofield, Jr.
v.
Loureiro Engineering Associates, Inc.

No. CV146024702S. | May 22, 2015.

Attorneys and Law Firms

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Kirk D. Tavtigian LLC, Avon, for Loureiro Engineering Associates, Inc.

RORABACK, J.

Background

***1** The plaintiff, Ronald Schofield, Jr., has filed a four-count second amended complaint against the defendant, Loureiro Engineering Associates, Inc., and alleges the following facts. On April 1, 2014, the plaintiff started working for the defendant. On April 16, 2014, the defendant ordered the plaintiff to take a drug test in the form of hair analysis. The plaintiff was not informed that he would be subject to drug testing after he was employed. As a result of this drug screening, the plaintiff was terminated.

In count one, the plaintiff alleges that the defendant violated General Statutes § 31–51u. In count two, the plaintiff alleges that the defendant violated General Statutes § 31–51v. In count three, the plaintiff alleges that the defendant violated General Statutes § 31–51x. In count four, the plaintiff pleads in the alternative alleging wrongful termination of the plaintiff by the defendant in violation of public policy.

On January, 26, 2015, the defendant filed a motion to strike the plaintiff's second amended complaint in its entirety. On February 6, 2015, the plaintiff filed an objection to the defendant's motion. This matter was argued at short calendar on March 23, 2015.

II

Discussion

"The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "[I]t is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted ... The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Citation omitted; internal quotation marks omitted.) *Coe v. Board of Education*, 301 Conn. 112, 116–17, 19 A.3d 640 (2011). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997).

The defendant moves to strike counts one, two and three on the grounds that the allegations in the amended complaint are legally insufficient to state a claim upon which relief can be granted. Specifically, the defendant argues that the statutes under which the plaintiff has brought his claims are inapplicable because the plaintiff was not compelled to submit to a urinalysis drug test. The defendant further argues that count four must be stricken because a cause of action for wrongful termination in violation of public policy is only viable when the plaintiff does not have a statutory remedy. The plaintiff counters by arguing that the statutes in question are clearly remedial and intended to protect fourth amendment rights. The plaintiff asserts that the fact that hair analysis rather than urinalysis was employed in this case is not an impediment to plaintiff bringing claims under statutes which strictly prescribe the process employers must follow in subjecting employees to urinalysis.

Counts One, Two and Three

***2** "When presented with a question of statutory construction, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. When a statute is not plain and unambiguous or would yield absurd or unworkable results, however, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter ..." (Citations omitted; internal quotation marks omitted.) *Desrosiers v. Diageo North America, Inc.*, 314 Conn. 773, 782, 105 A.3d 103, 108 (2014).

In *Atlantic Pipe Corp. v. Laborers International Union of North America, Local 611,* Superior Court, judicial district of New Britain, Docket No. CV–07–4015994–S (April 11, 2008, Trombley, J.) (45 Conn. L. Rptr. 681), the court examined the issue of whether General Statutes § 31–51x is limited to urinalysis testing only. The court concluded that it is "not violative of the [§ 31–51x] for the employer to require [the plaintiff] to submit to toxicology drug screening by saliva testing or hair follicle testing or any other valid non-urinalysis drug test." *Atlantic Pipe Corp. v. Laborers International Union of North America, Local 611*, Superior Court, judicial district of New Britain, Docket No. CV–07–4015994–S (April 11, 2008, Trombley, J.) (45 Conn. L. Rptr. 681).

In the present case, the defendant argues that counts one, two and three brought pursuant to General Statutes § 31–51u,[1] § 31–51v[2] and § 31–51x[3] respectively, must be stricken because the plaintiff did not submit to a urinalysis test but rather a drug screening in the form of hair analysis. As in *Atlantic Pipe Corp.*, this court finds that the drug testing statutes in question apply only to urinalysis testing and do not cover an employee who is subjected to other forms of drug testing.[4] Based on a plain reading of the statutes, the language is not ambiguous and must be afforded its ordinary meaning. See General Statutes § 1–1(a) ("[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language").

While the logic of plaintiff's position is readily understood and the seemingly irrational inconsistency which flows from the disparate protections made evident in this opinion are undeniable, "the task of changing the law lies with the legislature and not with the judiciary ... [I]t is not the business of the court to attempt to twist the interpretation of the law to conform to the ideas of the judges as to what the law ought to be or to attempt to make the law coincide with their ideas of social justice. The judicial function should not invade the province of the legislature." *Director of Health Affairs Policy Planning v. Freedom of Information Commission*, 293 Conn. 164, 182, 977 A.2d 148 (2009).

***3** Accordingly, the allegations set forth in counts one, two and three are legally insufficient to support a claim upon which relief can be granted because the statutes upon which those claims rely do not apply to drug testing performed through the type of hair analysis alleged in the complaint. The defendant's motion to strike is therefore granted as to counts one, two and three of the plaintiff's second amended complaint.

Count Four

As to count four, the defendant correctly points out that "[a] common-law approach to a claim of wrongful discharge is barred as long as a remedy has been made available to address the particular public policy concerns." *Campbell v. Town of Plymouth*, 74 Conn .App. 67, 76, 811 A.2d 243, 251 (2002).

In the present case, the plaintiff does not have a statutory remedy available to him for the reasons mentioned above. The plaintiff is therefore afforded the right to plead a common-law claim of wrongful discharge. For these reasons, the defendant's motion to strike count four of the plaintiff's second amended complaint is denied.

III

Conclusion

The defendant's motion to strike plaintiff's second amended complaint is granted as to counts one, two and three and denied as to count four.

Footnotes

1 General Statutes § 31–51u provides in relevant part, "[n]o employer may determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action solely on the basis of a positive urinalysis drug test result unless (1) the employer has given the employee a urinalysis drug test, utilizing a reliable methodology, which produced a positive result and (2) such positive test result was confirmed by a second urinalysis drug test, which was separate and independent from the initial test, utilizing a gas chromatography and mass spectrometry methodology or a methodology which has been determined by the commissioner of Public Health to be as reliable or more reliable than the gas chromatography and mass spectrometry methodology."

2 Count two brought pursuant to General Statutes § 31–51v states that "[n]o employer may require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment with such employer unless (1) the prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test, (2) such test is conducted in accordance with the requirements of subdivisions (1) and (2) of subsection (a) of section 31–51u and (3) the prospective employee is given a copy of any positive urinalysis drug test result. The results of any such test shall be confidential and shall not be disclosed by the employer or its employees to any person other than any such employee to whom such disclosure is necessary."

3 General Statutes § 31–51x provides in relevant part, "[n]o employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee's job performance."

4 The *Atlantic Pipe Corp.,* court's analysis as to the reach of General Statutes § 31–51x applies with equal force to § 31–51u and § 31–51v given that all of these statutes pertain exclusively to urinalysis.

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