



Maine Human Rights Commission

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INVESTIGATOR'S REPORT COMMISSION No. E18-0420-A & -B March 17, 2020

Michelle Geaghan (Waterville)

v.

Coffee News/John Buckley¹ (Bangor)
Bill Buckley (Bangor)

I. Summary of the Case:

Michelle Geaghan alleged that Respondents discriminated against her based on her age and/or sex by terminating her employment. She further alleged that Respondents retaliated against her after she filed her Complaint with the Maine Human Rights Commission ("Commission") by voiding her severance agreement. Respondents denied discrimination and retaliation, positing that it laid her off due to financial reasons and could not have retaliated against her because she was no longer an employee. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues and Resolutions Conference ("IRC"), and requesting information from the parties. Based upon this information, the Investigator recommends a finding that there are no reasonable grounds to believe that Respondents discriminated against Complainant based on her age and/or sex. The Investigator recommends a finding that there are reasonable grounds to believe that Respondents retaliated against Complainant based on her Complaint.

II. Jurisdictional Data:

- 1) Date(s) of alleged discrimination: September 24, 2018 – December 4, 2018
- 2) Date complaint filed with the Commission: October 29, 2018
- 3) Respondent has four employees and is subject to the Maine Human Rights Act ("MHRA"), as well as state and employment regulations.
- 4) Complainant is not represented by counsel. Respondent is represented by Ryan Dumais, Esq.

¹ Complainant named Coffee News//John Buckley as one of the Respondents in her complaint; this Respondent provided that its legal name is Coffee News USA, Inc. Because Complainant did not amend her complaint to use the name provided, the name she used has been retained. John Buckley will be referred to herein as "Vice President", and Bill Buckley as "President".

III. Development of Facts:

- 1) Complainant provided the following in support of her claims:

Complainant is a 53-year old woman who worked in sales along with a younger, male coworker ("Coworker"). During her employment, she saw President favoring Coworker. In her last year of employment, she completed more sales than her younger, male coworker ("Coworker"). Despite being the most successful sales employee, Complainant was laid off. As part of her severance package, Complainant was retained as an independent contractor to complete her sales until December 31, 2018. After she was laid off, Complainant filed a complaint with the Commission, alleging age and sex discrimination. After Respondents received notice of Complainant's Complaint, President removed Complainant's access to the company database and sent her an email berating her for making a claim of discrimination.

- 2) Respondent provided the following in support of its position:

Complainant worked for Respondents for four years. During the first two years of her employment, she did not make any sales. Due to financial loss within the company, Respondents needed to lay off an employee. Respondents chose to lay off Complainant because she was the least-senior sales employee. As a kind gesture, President offered Complainant a severance agreement that would give her the commissions for the sales she completed until December 31, 2018. When Respondents received the Complaint, President viewed Complainant as hostile and removed her access from the company database. He also recommended that she reconsider moving forward with her Complaint.

- 3) The Investigator made the following findings of fact based on the submissions and IRC:

- a) On September 24, 2018, Complainant was laid off. The parties disagree about whether Complainant or Coworker was the more productive salesperson, but agree that Coworker had been with Respondent for two years more than Complainant.
- b) On October 1, 2018, Respondents offered Complainant a position as an independent contractor completing sales until December 31, 2018.
- c) On October 11, 2018, Complainant accepted a position as an independent contractor for Respondents.
- d) On November 20, 2018, the Commission sent Respondents a copy of Complainant's Complaint.
- e) On December 4, 2018, President removed Complainant's access to the company database, barring her from completing her sales. President also sent Complainant an email, stating: "[Y]our decision to charge us with age and sex discrimination . . . have caused us to consider you as hostile to our company. In spite of our hiring two female employees during your time with us who were older than you and all our head offices are staffed with women older than you! You may want to reconsider your actions against us going forward."

IV. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Age and/or Sex Discrimination

- 1) The MHRA provides that it is unlawful to discriminate against an employee because of age and/or sex. *See* 5 M.R.S. § 4572(1)(A).
- 2) Because there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *See Me. Hum. Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 3) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that: (1) she belonged to a protected class, (2) she performed her job satisfactorily, (3) her employer took an adverse employment decision against her, and (4) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1st Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1st Cir. 1990); *cf. City of Auburn*, 408 A.2d at 1261. With regard to her age discrimination claim, Complainant also must show that those continuing to perform the job duties were of a substantially different age than Complainant. *See O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).
- 4) Once Complainant has established a prima-facie case, Respondents must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondents have articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondents' proffered reason should be rejected. *See Cookson v. Brewer School Dep't*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. In order to prevail, Complainant must show that she would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.
- 5) Here, Complainant established a prima-facie case by showing (1) she is a 53-year old woman; (2) she performed her job satisfactorily; (3) she was discharged from her job; and (4) Respondent continued to have her duties performed by a comparably qualified person, namely Coworker. Coworker was younger than Complainant, and it is assumed here that he was "substantially" younger.

- 6) Respondents, in turn, provided a legitimate, nondiscriminatory reason for the adverse action, namely that Complainant was let go because the company was not in good financial condition and did not have enough work for two salespeople, and she was the least senior salesperson. Furthermore, Respondent retained the employment of women older than Complainant in other locations.
- 7) In the final analysis, Complainant did not establish that the adverse action was the result of unlawful age and/or sex discrimination, with reasoning as follows:
 - a) Complainant could not prove that Respondent's actions were pretextual. Respondent laid off Complainant due to financial loss experienced by the company. Because she was the most recent hire, she was the person chosen to be laid off. Furthermore, Complainant did not make any sales within the first two years of her employment, contrary to Coworker's documented sales success. Respondent continues to employ women older than Complainant. Additionally, during the IRC, Complainant stated that she did not believe that the layoff was related to discrimination.
- 8) Discrimination on the basis of age and/or sex is not found.

MHRA Retaliation


- 9) The MHRA makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the Act] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S. § 4572(1)(E). The MHRA further provides that "[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act." 5 M.R.S. § 4633(1).
- 10) Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56; *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006). The term "materially adverse action" covers only those actions that are "harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern*, 126 S. Ct. 2405.
- 11) The prima-facie case creates a rebuttable presumption that Respondents retaliated against Complainant for engaging in protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondents must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. *See also Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondents make that showing, the Complainant must carry her overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse action." *Id.* Complainant must show that she would not have suffered the adverse action but for her protected activity, although the protected activity need not be the only reason for her protected activity. *See University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517, 2534 (2013) (Title VII); *Me. Hum. Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).

- 12) Complainant has established a prima-facie case by showing that she engaged in activity protected by the MHRA, namely filing a Complaint with the Commission. In response to her Complaint, Complainant (a) was removed from the company database which effectively terminated her contract as an independent contractor and (b) received a blatantly retaliatory email from President. Both of these actions would dissuade a reasonable worker from making or supporting a charge of discrimination.
- 13) Respondent failed to provide a legitimate, nondiscriminatory reason for the alleged adverse action. Respondent did not deny that President's actions were retaliatory, but instead posited that because Complainant was no longer an employee, the MHRA would not apply. This is not the case here. Complainant continued to perform the same sales work for Respondents that she had performed before her layoff. In any event, under the MHRA, any "person", which includes both individuals and corporate entities, can be held liable for retaliating against a person for filing a complaint with the Commission, and for interfering with a person's MHRA-protected rights. 5 M.R.S. § 4633(1)&(2). Here, President's actions on Respondents' behalf were specifically taken because of Complainant's Complaint, as President himself said in his email to Complainant.
- 14) Retaliation for MHRA-protected activity is found.

VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following findings:

- 1) There are **No Reasonable Grounds** to believe that Coffee News/John Buckley and Bill Buckley discriminated against Michelle Geaghan on the basis of sex and/or age and this portion of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).
- 2) There are **Reasonable Grounds** to believe that Coffee News/John Buckley and Bill Buckley retaliated against Michelle Geaghan for participating in MHRA-protected activity, and conciliation of this portion of the complaint should be attempted in accordance with 5 M.R.S. § 4612(3)



Alexandra R. Brindley, Investigator