

Memo

Date: February 20, 2008

To: Patricia E. Ryan, Executive Director

From: John P. Gause, Commission Counsel

Re: [REDACTED] Poole v. Central Maine Power Company

807-0647

Respondent has asked that the above-referenced complaint be administratively dismissed because it was untimely. Because the case was filed more than six months after the unlawful discrimination alleged, I think that the case should be dismissed by the Commission and forwarded to the EEOC for processing.

In the complaint, which was filed on November 14, 2007, Complainant alleges that Respondent discriminated against him on the basis of disability and protected Whistleblowers' Protection Act activity when it terminated his right to work from home. The initial notification that Complainant would no longer be permitted to work from home is dated February 2, 2007. In the February 2nd notification, [REDACTED] states, "[p]roviding you a home office arrangement after May 1, 2007 poses an undue hardship to [REDACTED]. Therefore, we need to construct a plan under which, in the near future, you can return to full-time status working at the [REDACTED] Office Building."

The statute of limitations under the Maine Human Rights Act starts to run when a complainant has received unambiguous and authoritative notice of a discriminatory act. *See LePage v. Bath Iron Works Corp.*, 2006 ME 130, ¶ 11. Here, Complainant received that notice on February 2nd, more than six months prior to the complaint being filed with the Commission.

Complainant argues (not unsympathetically) that his complaint was timely because the February 2nd notification gave him an appeal right through [REDACTED] which he took advantage of, and he did not receive final notification of the denial of his request to work from home until the appeal was exhausted on July 16, 2007. The test is not, however, whether Respondent's alleged discriminatory act has reached a state of actual or absolute finality or permanence. *Id.* at ¶ 15. The existence of an appeal mechanism generally does not delay the statute of limitations starting date until the appeal has been exhausted. *See Foster v. Gonzales*, 516 F.Supp.2d 17, 26 (D.D.C. 2007); *Colena v. New York City Dept. of Sanitation*, 2004 WL 2943099, *3 (S.D.N.Y. 2004); *Connors v. Maine Medical Center*, 42 F.Supp.2d 34, 50 (D.Me. 1999); *Soignier v. American Bd. of Plastic Surgery*, 92 F.3d 547, 553 (7th Cir. 1996). *But see Sifferman v.*

Board of Regents, Southeast Missouri State University, 250 F.Supp.2d 1139, 1143 - 1144 (E.D.Mo. 2003) (contrary result).

Here, because complainant filed with the Commission more than six months (but less than 300 days) from the date that he received unambiguous and authoritative notice of the alleged unlawful act, his complaint with the Commission is untimely, and the case should be dismissed and forwarded to the EEOC for processing.