



Maine Human Rights Commission
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INVESTIGATOR'S REPORT
E11-0430

April 19, 2013

[REDACTED]

v.

[REDACTED]

I. Complainant's Complaint:

Complainant [REDACTED] alleged that Respondent, [REDACTED] Inc. (hereinafter "[REDACTED]") violated the Maine Human Rights Act (hereinafter "MHRA") and the Whistleblowers' Protection Act (hereinafter "WPA") by retaliating against her for engaging in protected activity. [REDACTED] asserted that her employment was terminated because she made complaints about smoking in the workplace and because her doctor submitted a note that she could only return to a non-smoking work environment due to her health conditions. Additionally, [REDACTED] alleged that [REDACTED] violated the MHRA and Americans with Disabilities (hereinafter "ADA") when she was terminated before she returned from medical leave. [REDACTED] alleged that [REDACTED] refused to accommodate her disability because it did not eliminate second-hand smoke from the workplace.¹

II. Respondent's Answer:

Respondent states that it did not violate the MHRA, the WPA, and/or the ADA because it terminated [REDACTED] employment because she requested to have a part-time schedule due to her involvement with a fraternal organization, and [REDACTED] needed a full-time employee in the position [REDACTED] held.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: November 14, 2010.
- 2) Date complaint filed with the Maine Human Rights Commission: June 27, 2011. The Charge of Discrimination was amended on July 19, 2012 and also on August 6, 2012.
- 3) Respondent is subject to the MHRA, the WPA, and the ADA, as well as, state and federal employment regulations.

¹ Although Complainant raised another claim during the Fact Finding Conference on April 2, 2012, alleging retaliation for a prior Workers' Compensation Act claim, Complainant's attorney stated that Complainant was not pursuing this claim through the Commission.

- 4) Complainant is represented by [REDACTED], Esq. Respondent is represented by [REDACTED], Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and a Fact Finding Conference ("FFC"). This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:
 - a) [REDACTED] employed [REDACTED] as an Accounts Receivable Clerk from 1996 until her termination November 14, 2010. [REDACTED] operates a petroleum products distribution warehouse and sales office located in [REDACTED] Maine.
 - b) Important third parties: "Owner" is the owner and manager [REDACTED] and was also [REDACTED] supervisor. "Office Manager" shared an office with [REDACTED] and was also her supervisor. "Detective" is the Attorney General Detective who investigated [REDACTED] complaint about smoking at [REDACTED] workplace.
 - c) [REDACTED] alleged that [REDACTED] violated the MHRA and WPA by terminating her employment because she made complaints about smoking that was taking place in the workplace and because her doctor sent a letter to Owner stating that [REDACTED] could only return to a smoke-free work environment. Additionally, [REDACTED] alleged that [REDACTED] violated the MHRA and ADA because [REDACTED] refused to make a reasonable accommodation for her by eliminating second-hand smoke and by terminating her employment before she returned from her medical leave.
 - d) Respondent denied discriminating against [REDACTED]. Respondent stated that [REDACTED] was terminated because she requested to work a part-time schedule when [REDACTED] needed someone who could work full-time in the position that [REDACTED] held.
- 2) Complainant offers the following in support of her position:
 - a) [REDACTED] was hired by [REDACTED] in 1996 as an Accounts Receivable Clerk. [REDACTED] worked for [REDACTED] for roughly 14 years before her employment was terminated. While employed, [REDACTED] assisted with other company business including billing, sales, accounts receivable, payroll, customer service, and road sales [REDACTED] products.
 - b) While [REDACTED] stated in her complaint of discrimination that she never received any warnings during her employment, at the FFC, she stated that there was one instance when she put checks in the mail and the mail was never received. Owner was upset when this occurred, but [REDACTED] stated that she did not know what happened to the mail. This happened years before [REDACTED] was terminated.
 - c) In February 2010, [REDACTED] missed approximately a month of work after she had gallbladder surgery. Owner allowed [REDACTED] to take this time off with no issue.

- d) During her employment with [REDACTED] [REDACTED] was exposed to a significant amount of second-hand smoke. There was unrestricted smoking throughout [REDACTED] facility during her employment.
- e) [REDACTED] complained about smoking in the workplace on many occasions throughout her years of employment. She asked Office Manager that the smoking be stopped. On more than one occasion when Office Manager was smoking in front [REDACTED] face, [REDACTED] asked Office Manager to get her cigarette away from her face.
- f) [REDACTED] also made a complaint about smoking at [REDACTED] to a [REDACTED] Police officer when she saw him in 2008. The [REDACTED] Police Officer spoke with Office Manager and told her that [REDACTED] was in violation of state law prohibiting smoking in public places. The [REDACTED] Police Officer told Office Manager that if there were additional complaints, the Police Department would have to take action. The next day Owner came into the office and [REDACTED] mentioned to him that it was against the law to allow smoking in the building.
- g) In spite of the Police Department's warning, Owner said that he was not going to allow anyone to tell him that he could not smoke in his own business. Smoking continued unabated at [REDACTED] and [REDACTED] continued to lodge complaints with [REDACTED] about it.
- h) Around October 19, 2010 [REDACTED] began to experience chest pains. She made an appointment to see her doctor on October 21, 2010 and told Office Manager that she had scheduled the appointment. When [REDACTED] went to see her doctor, he was concerned that she was having a heart attack, so she was taken to Maine General Hospital by ambulance. [REDACTED] [REDACTED] was then transferred to Maine Medical Center where she had a catheterization and stent implementation. [REDACTED] was diagnosed with having coronary disease.
- i) On October 21 and 22, 2010 [REDACTED] boyfriend called Owner's home and spoke to his wife (since Owner himself was ill) and told Owner's wife what was going on with [REDACTED] [REDACTED] boyfriend asked Owner's wife to relay the message to Owner.
- j) [REDACTED] remained out of the office and unable to return to work due to her illness for several weeks.
- k) As part of her coronary disease treatment, [REDACTED] s doctor wrote a letter to Owner dated October 26, 2010 and asked Owner to provide a smoke-free workplace which would conform to the laws of the state and assist in [REDACTED] s recovery due to her coronary disease.
- l) Before returning to work, [REDACTED] was concerned that smoking at [REDACTED] had not stopped. [REDACTED] [REDACTED] contacted the Maine Bureau of Health the week of November 8, 2010. The Bureau of Health told [REDACTED] that she needed to contact the Attorney General's Office. [REDACTED] contacted the Maine Attorney General's office to report unlawful workplace smoking during the same week she contacted the Maine Bureau of Health.
- m) [REDACTED] s doctor approved her to return to work on November 15, 2010. [REDACTED] was planning to call Owner the morning of November 15, 2010 to ask if the smoking had stopped at [REDACTED] [REDACTED] had not spoken to Owner or Office Manager about her return to work while she was out of work due to her medical condition.

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- n) Owner called [REDACTED] on November 14, 2010 at a late hour and told [REDACTED] that she was being fired because she had been out of work for too long.
 - o) Detective called [REDACTED] to discuss her concerns on November 16, 2010. [REDACTED] told Detective that she was trying to ensure that workplace smoking had stopped at [REDACTED] before she returned to work, but that her employment had been terminated prior to her return.
 - p) Detective went to [REDACTED]'s house on November 23, 2012 after stopping by [REDACTED] the day before. Detective told [REDACTED] that the building was full of smoke.
 - q) The State of Maine investigated [REDACTED] and issued a fine for violating the Workplace Smoking Act and other acts against smoking.
 - r) [REDACTED] believes that Owner retaliated against her because her doctor sent a letter asking Owner to provide a smoke-free workplace before she could return to work.
 - s) [REDACTED] believed that Owner's stated reason for her termination is not true because Owner never asked her to come back to work sooner and had not previously terminated her employment when she was out due to illness on other occasions.
 - t) [REDACTED] never requested to work a part-time schedule due to her duties as president of the Rebekah Assembly of Maine (hereinafter "RAM").
 - u) [REDACTED] was able to complete her duties for RAM while working full-time because meetings took place during the evening. Any other time that [REDACTED] needed to take time to fulfill her RAM duties she used earned leave time.
- 3) Respondent provides the following in response to Complainant's allegations:
- a) On multiple occasions during [REDACTED] employment, Owner and Office Manager informed [REDACTED] that her work was substandard.
 - b) At the FFC Owner stated that [REDACTED] was a good worker, but that she had some problems writing collection letters so Owner or Office Manager would help her with that.
 - c) [REDACTED] never communicated any concerns about smoking in [REDACTED] workplace to Owner or Office Manager during her employment.
 - d) [REDACTED] acknowledged that some employees did smoke at times in the office. [REDACTED] believes that most smoking occurred outside or in the warehouse.
 - e) During the second week of October 2010, [REDACTED] approached Owner and told him that she would no longer be able to work a full-time work schedule. [REDACTED] told Owner that she needed to only work two or three days a week because she had been elected president of RAM. Office Manager was present during this conversation.
 - f) [REDACTED] had been active with RAM during her employment with [REDACTED]

- g) [REDACTED] had used leave time to attend RAM events during her employment.
- h) Prior to 2010, on multiple occasions, [REDACTED] mentioned to Owner that she had been elected an officer and it was going to take up much more of her time.
- i) During her employment, [REDACTED] accommodated [REDACTED] in relation to her medical illnesses by giving her any needed time off. This was particularly true when she needed to miss work for gallbladder surgery and in October 2010 when she experienced another medical illness.
- j) After receiving a letter dated October 26, 2010 from [REDACTED] doctor, Owner implemented a workplace smoking policy.
- k) During the FFC, Owner stated that he was aware of the laws prohibiting workplace smoking. Owner received the letter from [REDACTED] doctor dated October 26, 2010. Owner admitted that he was guilty for not implementing a no-smoking policy in his workplace before having the civil citation brought against [REDACTED] by the Attorney General's office. Owner stated that he did not implement a no-smoking policy because of Office Manager. Office Manager was a valuable employee who had worked there for 25 years, and was a habitual smoker.
- l) Owner terminated [REDACTED]'s employment because she requested to work only two to three days a week because she had been elected president of RAM.
- m) Owner told [REDACTED] that he needed someone working full-time in [REDACTED] administrative role.
- n) Owner had temporary workers and Office Manager complete [REDACTED] work while she was out in late October/early November 2010. Owner stated that Office Manager was getting upset that [REDACTED] had not returned to work and the accounts receivables piled up.
- o) While [REDACTED] was out due to her medical condition, Owner never called [REDACTED] to see when she would be returning to work.
- p) [REDACTED] was terminated because she made it clear that she needed to work a reduced schedule. [REDACTED] could not allow [REDACTED] to work a reduced schedule because it had an acute need for a full-time employee to be in the Accounts Receivable position.
- q) During the Fact Finding Conference Owner also stated the reason [REDACTED] was laid off was because the workload for the accounts receivable position was becoming overbearing to the office.
- r) Additionally, FFC, Owner also stated that [REDACTED] never told him that she needed to work a part-time schedule, which contradicts Respondent's written response to the complaint. Owner stated that Office Manager told him that [REDACTED] had told her that she wanted a part-time work schedule.
- s) At the time Owner terminated [REDACTED] her leave had been accommodated with sick time and vacation time as it had been in the past.

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- t) On the night of November 14, 2010, Owner contacted [REDACTED] and told her she was being laid off because her position required someone that would be working full-time and [REDACTED] was unable to do so.
 - u) During the phone conversation on November 14, 2010, Owner did not mention that [REDACTED] had been out of work for too long.
 - v) Owner stated that he could have terminated [REDACTED] employment in 2008 after he knew that she had complained about smoking in the workplace. Additionally, he had kept her position open for three weeks when she had medical issues in late October/early November 2010.
 - w) Detective visited [REDACTED] on November 22, 2010, which was after [REDACTED] was terminated.
- 4) A Complaint for Civil Violation, VI-11-12, was entered in District Court, District Seven, Division of Southern Kennebec County, against [REDACTED] alleging that [REDACTED] permitted and allowed smoking in enclosed areas of its business.
- 5) According to the Attorney General Investigations Report in Case Number 2010-085-903, Case Title: [REDACTED]
- a) Detective received an email referral of a workplace smoking complaint on November 16, 2010. Detective spoke with [REDACTED] by phone that same day.
 - b) Detective visited [REDACTED] on November 22, 2010 at 11:30 a.m. During his visit, Detective noted a strong odor of cigarette smoke in the building.
 - c) Officer Manager told Detective that [REDACTED] was told that smoking was allowed in the business when she was hired. Office Manager also told Detective that she and other employees smoke in the business because Owner allows them to smoke in the workplace.
 - d) Office Manager told Detective that there was no workplace smoking policy currently in place.
 - e) Detective met with [REDACTED] on November 23, 2010 at her residence, and also met with a Sergeant with the [REDACTED] Police Department. The Sergeant told Detective that he visited [REDACTED] because the Police Department buys products from [REDACTED]. Sergeant also told Detective that the inside of the business including the warehouse and public accessible office area was always heavy with second-hand smoke. Another [REDACTED] Police Officer that Detective spoke to by phone stated that the staff at [REDACTED] was always smoking when he went in there. The Officer told Detective that he received two complaints about smoking at [REDACTED]. The Officer referred the first complaint to a State Agency and when the second complaint occurred, he went to [REDACTED] to advise Office Manager that smoking in the business was against the law.
 - f) [REDACTED] entered into a Consent Order for Civil Violation with the State of Maine, Department of Health & Human Services for the Complaint that was filed. The Consent Order imposed \$4,550.00 in fines and surcharges and required [REDACTED] to immediately adopt, implement, post and supervise a policy prohibiting smoking in enclosed areas of its business. Additionally, any

designated smoking areas must be located outdoors at least twenty feet away from any windows, doors, intake vents or other openings.

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

MHRA and WPA Retaliation

- 2) The MHRA prohibits termination because of previous actions that are protected under the WPA. See 5 M.R.S. § 4572(1)(A).
- 3) The WPA makes it unlawful to "discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting in good faith, or a person acting on behalf of the employee reports to the employer or a public body what the employee has reasonable cause to believe is a violation of law or rule adopted under the laws of this State or is a condition or practice that would put at risk the health and safety of the employee or any other individual." 26 M.R.S. § 833(1)(A, B).
- 4) Here, Complainant [REDACTED] alleges that Respondent [REDACTED] retaliated against her by terminating her employment because she reported that smoking was taking place in the workplace in violation of state laws.
- 5) Respondent [REDACTED] denied the allegation of discrimination and stated that [REDACTED] was terminated because she requested a part-time work schedule due to increased responsibilities with RAM and [REDACTED] required someone who could work full-time in [REDACTED]'s position.
- 6) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. See *DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 508, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in "close proximity" to the protected conduct. See *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
- 7) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. See *Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a non-discriminatory reason for the adverse employment action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes 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 employment action." *Id.*

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- 8) In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant's protected activity, although protected activity need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.3d 1253, 1268 (Me. 1979).
- 9) Here, Complainant has alleged and demonstrated a prima-facie case of retaliation in violation of the MHRA and WPA. Reasoning is as follows:
 - a) Despite Respondent's denials, Complainant is credible in stating that she made repeated complaints to Owner and Office Manager about smoking in the workplace and the fact that it was illegal. Additionally, Complainant's doctor sent Owner a letter dated October 26, 2010 which stated that Complainant would need a smoke-free environment when she returned to work in accordance with applicable laws.²
 - b) Complainant has met the second prong of her prima-facie case, since it is undisputed that Owner ended Complainant's employment with [REDACTED] on November 14, 2010.
 - c) Complainant has also met the third prong of her prima-facie case in relation to showing that there was a causal link between Complainant's termination and her alleged protected activity because Complainant stated that she expressed concerns about smoking in the workplace during her employment and her doctor sent a letter to Owner on October 26, 2010 stating that Complainant could only return to a smoke-free work environment. This was less than a month from the date Complainant was terminated. It appears that Complainant's alleged protected activity and the end of her employment were sufficiently close in proximity to establish causation.
- 10) Respondent has articulated a legitimate, non-discriminatory reason for Complainant's termination, namely, Complainant asked Respondent to work a part-time work schedule instead of full-time due to increased responsibilities with RAM. Respondent believed that it needed someone who would be able to work full-time in Complainant's position and communicated this to Complainant.
- 11) At the final stage of the analysis, Complainant has demonstrated that Respondent's reason was false or irrelevant and that engaging in protected activity brought about her termination. Reasoning as follows:
 - a) Owner was aware of the laws against smoking in the workplace. Owner also received Complainant's doctor's letter on or around October 26, 2012 stating that Complainant would need to return to a smoke-free environment due to her health conditions. Despite Complainant and her doctor telling owner that he needed to provide a smoke-free work environment because it was against the law and for Complainant's health, Owner did not implement a smoking policy in the workplace until after he was fined by the State in response to Complainant's

² Even if this is the case, the facts show that smoking had been taking place in Respondent's facility for at least 25 years. As such, Complainant's complaint to the Bureau of Health and Attorney General's office would not prevent her from a finding that she had engaged in protected activity. "Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice." 26 M.R.S. § 833(2).

complaint about smoking at ■ which was after he had terminated Complainant's employment.

- b) Owner has given inconsistent reasons for why Complainant's employment ended.
 - i) Initially Owner stated that he terminated Complainant's employment because she had requested a part-time work schedule due to increased responsibilities with RAM. During the FFC Owner acknowledged that Complainant never asked him for a part-time work schedule, clarifying that he had received that information from Office Manager. Complainant adamantly denies that she asked for a part-time work schedule. Further, if Complainant wanted a reduced work schedule it would follow that she would need to have Owner and/or Office Manager discuss this with her. Owner acknowledged that he never spoke with Complainant about having a reduced schedule. Additionally, Complainant had been involved with RAM during her employment and served as Warden and Vice President while still working full-time.
 - ii) At the FFC, Owner later stated that the reason Complainant was terminated was because the accounts receivables were getting to be too much. Owner stated that Office Manager was assisting with the accounts receivables while Complainant was on medical leave and he had also hired temporary workers. Despite this, Owner stated that during the time that Complainant was out he did not contact her to see when she would be returning to work. This indicates that Owner was not interested in having Complainant return to work.
 - iii) Owner's varying reasons for terminating Complainant were not credible.
- c) Owner admitted (only at the end of this investigation, after two years' of denials) that he did not want to change the rules to provide a smoke-free workplace. The reason he gave was that a valuable employee, Office Manager, smoked. This establishes a clear motive for him to retaliate against an employee who needed and wanted a smoke-free workplace. The other evidence submitted in this case indicates that Owner himself did not want to be told what to do about smoking in the workplace, either by Complainant or otherwise. By terminating Complainant's employment, Office Manager was allowed to continue to smoke and Owner did not have to implement a no-smoking policy. Owner only implemented the no smoking policy after he was fined by the State.
- d) Based on the above analysis, Complainant has shown that Respondent would not have taken the adverse employment action but for her protected activity.

12) Retaliation for WPA-protected activity in violation of the MHRA and WPA is found.

Disability Discrimination - Complainant's Termination

- 13) Because here 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 *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).

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- 14) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that she (1) was a member of a protected class, (2) was qualified for the position she held, (3) suffered an adverse employment action, (4) in circumstances giving rise to an inference of discrimination. *See Harvey v. Mark*, 352 F. Supp. 2d 285, 288 (D.Conn. 2005). *Cf. Gillen v. Fallon Ambulance Serv.*, 283 F.3d 11, 30 (1st Cir. 2002).
- 15) Once Complainant has established a prima-facie case, Respondent 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 Respondent has 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 Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 16) 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.
- 17) Complainant has met her prima-facie case. Reasoning is as follows:
 - a) Complainant is an individual with a disability who needed a medical leave of absence and a smoke-free environment at work to accommodate her disability.
 - b) There is no evidence to show that she was not qualified for the position that she held. Owner stated that Complainant was a good employee although she did have trouble with collection letters.
 - c) She was terminated from her employment which constitutes an adverse employment action.
 - d) The circumstances surrounding Complainant's termination give rise to an inference of discrimination. Respondent knew that Complainant was out of work due to coronary disease. Respondent did not inquire as to when Complainant would be able to return to work, and Complainant was terminated the day before she planned to return to work.
- 18) Respondent has articulated a non-discriminatory reason for Complainant's termination, namely, Office Manager told Owner that Complainant wanted to work a part-time work schedule and Owner needed someone in that position that could work full-time.
- 19) At the final stage of analysis Complainant has shown that she would not have been terminated but for her disability and need for reasonable accommodations.

- i) Complainant had been out on a medical leave before when she missed almost a month of work due to her gallbladder surgery. Owner expressed no issues regarding the amount of time Complainant was out of work for this procedure in February 2010. If Owner had no issues when Complainant had been out on medical leave in February 2010 he should have had no issues with her leave in late October/early November 2010.
- ii) Owner gave inconsistent reasons for why he ended Complainant's employment. Initially Owner stated that he terminated her employment because Complainant requested a part-time work schedule. Owner later acknowledged that he did not discuss this with [REDACTED] but it was communicated to him by Office Manager. Even after Office Manager communicated this to Owner, he never had a discussion with [REDACTED] about working a part-time work schedule.
- iii) Then, at the FFC Owner stated that the accounts receivables were becoming too much and he needed to replace Complainant. However, Owner never asked Complainant when she would be returning to work. This tends to show either that her absence was not causing much difficulty, or that he did not intend for her to return to work; in this case, it indicates the latter. This is particularly true since Owner also stated that Office Manager was assisting in completing Complainant's work, and that he had also hired temporary workers to assist in performing the accounts receivable job. Complainant stated that when Owner called to terminate here, he told her that she had been out of work for too long.
- iv) Given the above, [REDACTED] has at least an even chance of showing that Respondent's given reasons are pretext for discrimination and that she would not have been terminated but for her request for accommodations for her disability.

20) It is found that Respondent discriminated against [REDACTED] in refusing her request for accommodations and terminating her due to her disability.

VI. Recommendation:

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

- 1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] retaliated against Complainant [REDACTED] by terminating her employment for engaging in protected whistleblower activity;
- 2. There are **Reasonable Grounds** to believe that Respondent [REDACTED] terminated Complainant [REDACTED] employment due to her disability; and
- 3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).


Amy M. Sneirson, Executive Director


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