



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

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July 14, 2015

## INVESTIGATOR'S REPORT E14-0433

[REDACTED] (Portland)

v.

[REDACTED] (Auburn)

### **I. Complainant's Complaint:**

Complainant [REDACTED] alleged that Respondent [REDACTED] [REDACTED] unlawfully discriminated against him in employment because of his age.

### **II. Respondent's Answer:**

Respondent stated that Complainant was not hired because he did not submit an application for the position. Respondent denied telling Complainant over the phone that it was only looking to hire college and high school aged applicants, although its advertisement for the position stated such a preference.

### **III. Jurisdictional Data:**

- 1) Last date of alleged discrimination: June 16, 2014
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): June 27, 2014
- 3) Respondent has approximately 5 to 9 employees and is subject to the Maine Human Rights Act ("MHRA") and state employment regulations.
- 4) Complainant is not represented by counsel. Respondent is not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties. 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) Complainant provided the following in support of his position:

## INVESTIGATOR'S REPORT E13-0595

- a) Complainant is a 35 year-old man.
  - b) Complainant saw a job advertisement for a part-time Lot Attendant with Respondent's company. The ad posted read "We are looking for a PT lot attendant who is ready to work in an energetic fast past [sic] environment. *We are interested in a high school or college student* who is looking to get into the automotive industry! You will be washing and cleaning vehicles as well as ensuring the lot looks predestine [sic] at all times! *So if you are a high school or college student* looking for experience give us a call!" (emphasis added).
  - c) Complainant believed he was qualified for the position and called Respondent to apply for the job. Complainant spoke with an employee of Respondent ("Employee"), who is part of the hiring process. During the conversation, Employee stated that Respondent was only looking to hire someone just out of high school or in college, specifically someone in their late teens or early twenties. Complainant recalls that the Employee said that Respondent was looking to hire "someone young".
  - d) After this conversation, Complainant decided not to submit a paper application with Respondent for the position.
  - e) Complainant stated that Employee did not say anything about considering other applicants who do not fall within the preferred age group.
- 2) Respondent provided the following in response to Complainant's allegations:
- a) Respondent operates a used car dealership. As part of Respondent's hiring process, Respondent places an advertisement on Craigslist.com, answers phone inquiries, and invites callers to come to the dealership to fill out an application in person.
  - b) Respondent maintains that it did not hire Complainant because he did not fill out an application.
    - i. Employee concedes that she told Complainant over the phone that Respondent was looking to hire a high school or college student. However, Employee contends that she did mention Respondent would entertain all applicants that stop in and apply.
  - c) Respondent received only one paper application from a candidate. The person Respondent hired for the position was 21 years old and was hired on the spot because Respondent felt he was qualified for the position.

### **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.

*Age Discrimination: Failure to Hire*

- 2) Pursuant to the MHRA, it is unlawful for “any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of ... age....” 5 M.R.S. § 4572(1)(A).
- 3) 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).
- 4) Complainant establishes a prima-facie case of unlawful age discrimination in a failure to hire claim by showing that (1) he applied for and (2) met the minimum objective qualifications for the job sought, (3) he was rejected, and (4) the person hired was of a substantially different age than him. *City of Auburn*, 408 A.2d at 1263; *Maine Human Rights Com. v. Kennebec Water Power Co.*, 468 A.2d 307, 309 (Me. 1983). See *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).
- 5) 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.
- 6) 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. In order to prevail, Complainant must show that he 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.
- 7) Here, Complainant alleges that Respondent failed to hire him based on his age. Respondent denied discrimination, stating Complainant did not submit a formal application. Respondent further stated that it told Complainant it would be considering all submitted applications.
- 8) Complainant has established a prima-facie case by showing that he applied for the position when he called Respondent with the intent to find out more about the position but was discouraged from applying, he could have performed the work required of a part-time lot attendant, he was rejected, and the person hired as a lot attendant was 21 years old.
- 9) Respondent has articulated a legitimate, nondiscriminatory reason for not hiring Complainant, namely that he did not submit a formal application so he was not considered him for the position.
- 10) At the final stage of analysis, Complainant has established that Respondent failed to hire him based upon his age. Complainant called Respondent and was discouraged from applying. While Respondent says that Complainant was told that all applicants would be considered, Complainant denies that this happened. The facts support that Complainant was discouraged from applying due

to Respondent's preference for a high school or college aged applicant because Respondent's advertisement for the part time lot attendant position stated the preference twice and because Respondent admits to telling Complainant over the phone about that preference. Complainant has showed at least an even chance of prevailing in a civil suit because Respondent was looking for a high school or college aged applicant to hire.

- 11) It is found that Respondent discriminated against Complainant in its failure to hire him for employment.

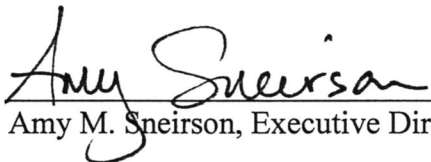
*Age Discrimination: Discriminatory Advertisement*

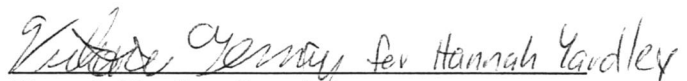
- 12) It is unlawful discrimination under the MHRA for an employer to "[p]rint, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon . . . age". 5 M.R.S. § 4572(1)(D)(4). See also 94-348 C.M.R. Ch. 3, § 3.04(A)(1) (Commission's Employment Regulations, which specify that advertising a discriminatory preference is an "unlawful employment practice").
- 13) In this case, it is undisputed that Respondent's advertisement for the parking lot attendant position stated a preference for a high school or college student. Of the four sentences in the advertisement, two were devoted to stating this preference. It is also undisputed that Respondent confirmed over the telephone that it was seeking a high school or college student for the position.
- 14) It is found that Respondent's advertisement violated the MHRA.

**VI. Recommendation:**

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

1. There are **Reasonable Grounds** to believe that [REDACTED] discriminated against [REDACTED] by failing to hire him based on his age in violation of the MHRA;
2. There are **Reasonable Grounds** to believe that [REDACTED] violated the MHRA by stating a discriminatory preference on the basis of age in its advertisement; and
3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Hannah Yardley, Legal Extern