

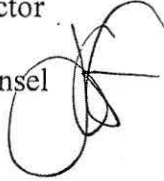
Memo

Date: August 1, 2007

To: Patricia E. Ryan, Executive Director

From: John P. Gause, Commission Counsel

Re: [REDACTED]



I understand that Complainant has indicated that she wishes to amend her complaint of discrimination to include a retaliation claim and then request a right-to-sue letter on the entire claim because more than 180 days have passed since the initial complaint was filed. For the foregoing reasons, I think we should grant the request.

The Maine Human Rights Act states that, “[i]f, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.” 5 M.R.S.A. § 4612(6).

In this case, more than 180 days have expired since the initial complaint was filed, but less than 180 will have passed between the filing of the retaliation complaint and the request for the right-to-sue letter. Our Procedural Rule addresses the relation back of complaints that are related to or grow out of other complaints:

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments *and amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.*

Procedural Rule § 2.02(F) (emphasis added).

Assuming that the retaliation claim alleges that Complainant was retaliated against for protected activity related to the initial complaint, the retaliation claim would “relate back to the date the complaint was first received.” *Id.* Because the Procedural Rule does not limit the context in which the relation back occurs, I think it would also apply for purposes of the right-to-sue letter in § 4612(6).

Although this will prevent us from investigating the retaliation claim, my research suggests that Complainant is probably not required to file the retaliation claim with the Commission prior to going to court. *See Clockedile v. New Hampshire Dept. of Corrections*, 245 F.3d 1, 6 (1st Cir. 2001) (“[R]etaliatio[n] claims are preserved so long as the retaliation is reasonably related to and grows out of the discrimination complained of to the agency- *e.g.*, the retaliation is for filing the agency complaint itself.”).