Maine Human Rights Commission
51 State House Station | Augusta ME 04333-0051

Physical location: 19 Union Street, Augusta ME 04330
Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: 1-888-557-6690
www.maine.gov/mhrc

Amy M. Sneirson
Executive Director

John P. Gause
Commission Counsel

INVESTIGATOR'S REPORT
E11--0554

July 8, 2013

[redacted] [redacted]

v.

[redacted] [redacted]

I. Complaint:

Complainant alleges that she was subjected to repeated unlawful sexual harassment by co-workers and supervisors and that after she reported such discrimination she was subjected to ongoing retaliation.

II. Respondent's Answer:

Respondent denies that any discrimination or retaliation occurred and states that Complainant's report of discrimination was promptly investigated and the alleged harasser was appropriately disciplined.

III. Jurisdictional Data:

1) Date of alleged discrimination: 2007 through 8/23/2011, and continuing.

2) Date complaint filed with the Maine Human Rights Commission: 8/31/2011 (original complaint); 9/29/2011 (amendment alleging retaliation).

3) Respondent [redacted] ("the Town") employs more than 15 individuals and it is required to abide by the non-discrimination provisions of the Maine Human Rights Act, Title VII of the Civil Rights Act of 1964, and state and federal employment regulations.

4) This preliminary investigation, which included a review of the parties' written submissions and requests for additional information, is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds".

5) The Complainant is represented by Attorney [redacted]. The Respondent is represented by Attorney [redacted].

IV. Development of Facts:

1) The parties and undisputed issues in this case are as follows:

a) On or about December 2000 the Complainant began working for the Respondent Town as a volunteer firefighter.

b) On or about 2/16/2011, the Complainant sent a letter to the Town alleging "gender harassment."

c) Important third parties include Firefighter/Ambulance Driver/Emergency Medical Assistance ("EMA") Director "LT," Selectman "SS," Assistant Fire Chief "YY," Emergency Medical Transport ("EMT") Service Chief "KS," Firefighter/EMT/Complainant's husband "PF", and Fire Chief "DE."

Complainant's MHRC Claims

2) (Complainant, hereinafter "C") In 2000 I began working for the [redacted] as a volunteer firefighter. Throughout my 10 years of employment, I have been subjected to being called "bitch" and "dumb blonde," fat jokes and breast comments. For example, in 2004, while looking at my chest, EMA Director LT, said to me, "Wow, you must be nursing." In July 2007, LT said to me, "You think you can handle a big hose?" In August 2007, I was asked by the Maine State Police to remove LT from an accident scene. Later, LT said, "Bitch, who do you think you are kicking me off a scene?" In February 2009, referring to me and a female police officer, LT said, "You women can be real bitches." I told LT that he was rude. Also in 2009, LT referred to a woman as the "biggest bitch" and that what she needs is "to get laid." I reported this offensive story to Selectman SS, who replied, "You know [LT], no one is going to change him, he is like cancer, there is no cure." No action was taken against LT. He also often told stories of a female department member and how she was the "blow job queen." LT also questioned aloud whether a male co-worker could "get it up anymore."

3) (C) In April 2009, LT, PF[1] (who was serving as Assistant Chief) and I responded to a car accident involving a critically injured female who had hit a tree. LT made the comment that the "stupid bitch tried to kill herself." Fire Chief DE heard LT say this, said he had heard enough and that LT better "shut the hell up."

4) (C) In July 2009, while transporting a 20 year old female patient with facial injuries, an Emergency Medical Technician, Mr. NN, cut the clothes off her to assess for other injuries. He left her chest exposed, paying limited attention the other male patient in the truck. NN cut her bra off even though it was not necessary to assess her injuries. I later told a paramedic of my concerns about NN's behavior. I believe the paramedic reported what I told him to (then) Chief PF, who, because he was my husband, asked Selectman SS to address my complaint. I do not know what happened as a result.

5) (C) In January 2010, Selectman SS had come into the Chief's office and complained to Chief PA about the Selectmen's Assistant, who SS thought might be going through the "change" because she had been extremely difficult and emotional to deal with. SS also stated he wanted to move her into the Planning Board office but said, "You know how emotional you girls can be."

[1] PF, who is the Complainant's husband, is also a Paramedic/Firefighter with the Town [redacted] He served as Fire_Chief from May 2009 to May 2010.__.

6) (C) On 1/14/2010, while NN and I were in the ambulance with a 23 year old who was pregnant, NN asked the patient to remove her underwear, which she did, even though there was no medical indication that this was necessary. After we transferred the patient NN said, "God I love my job."

7) (C) LT would ask male department members to show him the distance between their thumb and index finger and say that was how to tell the size of a man's penis. The Captain and Lieutenant were aware of this but did nothing. Chief PF also went to Selectman SS about this.

8) (C) In April 2010, while updating Selectman SS of my consultation with a surgeon to repair the ulna collateral ligament of my wrist, I gave him worker's compensation paperwork. SS suggested that I was faking my injury, something I am not aware that he had ever claimed for any male worker.

9) (C) From May 2010 to the present, the Selectmen have refused to allow me to respond to fire or Emergency Medical Service ("EMS") calls. In Spring 2010, I was asked by two Lieutenants to respond to a call and take incident command. Someone later complained to the Selectmen that I was at the scene and was lying to workers comp and they wanted me brought up on criminal charges. I told Selectman SS that I had done nothing wrong and was being singled out and harassed. No male department member has ever been called into the Selectmen's office when they had light duty or had limitations from an injury.

10) (C) In May 2010, my monthly EMS pay was not paid in full while all the men were. I was deleted as EMS Administrator from the State EMS run sheet database while out for surgery even my job required me to review medical charts monthly. No male co-worker has had their privileges changed or taken away when they went out on medical leave. In May 2010, locks to the Chief's Office were changed but I was not given new keys for almost 3 months, while men had new keys within days. I also did not receive one of the new radios that came in while I was out on medical leave.

11) (C) On 6/7/2010, I attended an Officers' meeting where NN as introduced me to a vendor as the "Ex-Chief's wife." NN later asked me to "tell the guys how you had a blonde moment and fell on your face at Maine Med and broke your wrist." NN started to laugh. I felt humiliated and belittled by his comments. He leered at me and did "elevator eyes." I complained about this that evening to the Lieutenant and (Acting) Chief YY[2], who said he was giving NN "enough rope to hang himself."

12) (C) In June 2010, NN was bragging and showing department members graphic pictures on his phone of his wife's new breast augmentation to co-workers, including officers; I felt uncomfortable and left the room. Later, NN looked at my chest and said, "Not that you need any help with fake boobs." I was upset and embarrassed. In a couple days, I told Asst. Chief YY about the breasts comments and pictures. Again YY said that he was giving NN enough rope to hang himself and that "hopefully he would quit when the selectmen didn't make him the new chief." No action was ever taken.

13) (C) In July 2010, an order was submitted to the Selectmen to pay Department Officers their semi-annual Officer stipend. All four male officers were paid in July and men previously out on medical leaves were paid their stipends. I contacted Chief YY to ask why I had not been paid and he said the Selectmen refused to sign my check. I said that this was discrimination and harassment.

[2] YY was Acting Chief from May to October 2010.

14) (C) In August 2010, I met with Chief YY about light duty, something male firefighters had never been asked to do. I was told to type my own light-duty job offer, my title would change from Captain to Secretary, and I would receive $10 hour instead of $12 hr as an EMT. I was upset and humiliated. I told YY that I could not type due to my injury, that it was not proper for me to write my own light-duty job offer, and I asked why it was $10.00 hour instead of $12.00. I asked why male officers did not have their titles stripped from them when they were injured or given light duty. I asked, "Is it because I am a female?" His reply was, "This is what the Selectmen told me to do."

15) (C) I was very upset and contacted my workers comp advocate to state that I would not write my own light duty job offer, that I was not a secretary, and questioned being paid two dollars less per hour. The advocate stated that he had already advised the Selectman that the job offer had to be written by them and that the difference in wage did not matter because I would get the same weekly amount and that my job title should not be changed. He said that he would take care of the issue.

16) (C) In August 2010, Chief YY also told me that I was no longer allowed to respond to fire scenes or rescue calls while on light duty per the Selectmen. YY also told me that the Selectmen wanted me to check in with "the girls" in the front office when at the building. No male officer had to do this.

17) (C) In September 2010, while on light duty, more than once I was asked to perform duties beyond my physical limitations and in adverse conditions. I was asked to inventory the supplies in the upstairs storage area, in excess of 85 degrees. I was only able to inventory the top row of boxes because I was unable to lift them with one hand. I had a headache from the heat and I was in a lot of pain. I left a note indicating that I would need someone to lift the boxes for me. I was also asked me to retype the Town's street directory, which I was unable to do due to my wrist surgery and pain.

18) (C) On 9/9/2010, I was notified that I was not being reappointed as Emergency Management Deputy. The Director of the County EMA had previously recommended that I take over the LT's EMA job. In September I also asked to review my personnel file and discovered many documents missing. I was told that many non-officers had been given access to where the records were kept.

19) (C) In November 2010, Chief DE (who was not the Chief when the July Officer stipend was first requested) asked me what officers needed to be paid their December Officers' stipend. I told him there were three other male officers and myself. I told DE that I felt discriminated against because I had not yet been paid my July stipend. DE said this was illegal, and that he would request that the Selectmen pay me in full, including my past due July stipend. DE submitted a purchase order the following week so all officers would be paid by December 1. All male officers were paid but I was not. Chief DE later told me that the Selectmen had issues with paying me and that he had been yelled at when bringing my issue up I was finally paid in January 2011, a month after all the men were.

20) (C) In December 2010, I asked Chief DE for more light duty hours and reviewed my physical limitations. He agreed that I could help with a firefighter class, giving me about 8-10 hours a week. Three times DE had asked for a meeting with him, the Selectmen, me and my MMA adjuster, to assist me through my long comp process but the Selectmen would not agree. DE asked for a copy of my light-duty job but the Selectmen said there wasn't one. Selectman SS told DE that he was allowing his friendship with me to cloud his judgments as Chief. DE has been told by SS (a former insurance agent) that "this is his baby," and he would handle my comp claim. On 12/22/2010, I was told me that my weekly rate was being reduced by 50% because I had work capacity.

21) (C) In January 2011, I received a call from a Captain who advised me of new officers. He said the Selectmen had an issue with reappointing me as a Captain. When Chief DE asked the Selectmen about this, they said it was based on the Town's counsel's advice. That month I also told DE I wanted to review my workers comp file. DE said that the Selectmen had removed my light duty information from the file. DE met with the Selectmen and requested my entire file but they refused.

22) (C) By February, I had not been paid for the 4+ weeks of light duty since I requested more hours. In the past, I had been paid weekly. I spoke about this with DE and told him that I was sick of the Selectmen's games and harassment. After not being paid for several weeks, I contacted DE again, who agreed laws were being violated by the Selectmen. DE asked about my unpaid timesheets and he was told they had been given to the Selectmen the same day they were received for processing.

23) (C) On 2/16/2011, I sent a letter to the Town complaining of gender harassment. On 2/24/2011, I sent a formal letter to the Town regarding their failure to pay wages since my weekly demands and inquiries by Chief DE failed to end in payment. I had not been paid for work since 1/24/2011. On that date I also had six hang up calls from an unknown telephone number. On 2/28/2011, I received a certified letter from the Town acknowledging that they had received my harassment complaint. On 3/1/2011, Chief DE addresses my payroll issues and states that he is considering resignation unless the Selectmen change. The following day, an SUV sat at the end of my driving way for 20+ minutes.

24) (C) On 3/2/2011 Chief DE noted in his log that, after submitting my light duty payroll, a Selectman asked him why we were still receiving payroll for me. That same day DE told me that, due to an error on his part, my payroll for the week of the 21st was late. I told him that I understood human errors occur but the Selectmen withholding my pay for over a month was unacceptable.

25) (C) On 3/8/2011 I received a voicemail from the Town's Attorney requesting a meeting at my convenience to discuss my 2/15/2011 letter regarding gender harassment. The next day I went to the station and a Captain said to me, "When I saw you I wanted to hug you but I don't want to get brought up on harassment charges." When I didn't reply he said, "What? You aren't talking to me anymore." I promptly reported the Captain's comment to Chief DE, who apologized and said he would address the issue with him. In a letter to me, DE said that the Captain needed to apologize. However, by the end of March 2011, I had still not received an apology from him.

26) (C) As 0f 3/14/2011, I had not been paid for the weeks of February 21st, February 28th, or March 7th. All others in the department were paid on time. The next day I was told that that the two checks from the Town dated 2/24/2011could not to be processed because the routing numbers were unreadable. I received three bounced check charges of $ 25.00 each because Respondent's checks were returned.

27) (C) On 3/21/2011, a week after receiving a letter from my worker's comp attorney, the Selectmen requested that Chief DE limit my light duty hours to 4-6 per week, although I had been previously working 6 to14.5 hours per week. Chief DE had told me that there was plenty of work to be done. As of 3/24/2011, I still had not been paid for January 24th to January 30th, while all the men had been.

28) (C) On 3/30/2011, I received a letter from the Selectmen stating that, "*In preparing information to send to your attorney, it came to our attention that, due to questions we had regarding wording on these timesheets, they were not processed for payment and misfield.*" I knew this was false because Chief DE had asked the Selectmen weekly about my payroll and they responded that they were undecided if they were going to pay it.

29) (C) In May 2011, I asked Chief DE if he had heard anything from the Selectmen about allowing him to oversee my light duty and give me more hours and DE said Selectmen SS had said, "I will be damned if I pay that bitch." On 6/8/2011, Chief DE advised all officers that personnel and training files had been removed from his office and that the Selectmen would now have unlimited access to my files, including medical records. I believed this action to be evidence of the Selectmen's retaliation against Chief DE for reporting to them that I had been discriminated against.

30) (C) On 7/13/2011, the Selectmen finally held a disciplinary hearing for LT. However, LT was not fired but was put on temporary unpaid leave from just some of his Town positions, including from the Fire/EMS and EMA positions, which are stipend/volunteer positions, where the pay was only a set amount based on licensure. LT was allowed to keep his hourly paid positions, including on the financial committee, the appeals board, as a ballot clerk, and as a driver for public works. The Selectmen based their decision on my testimony, LT's, and the retained attorney's investigation, without getting evidence from anyone else. Problems with disciplinary hearing included the following:

- LT claimed no Chief had ever told him not to do what he was doing, such as calling women bitches. The Selectmen actually used this as a factor in going easier on him, forgetting that LT knew it was wrong and that Town policy clearly prohibits degrading sexual conduct and speech. Chief FT, my husband, had gone to Selectman SS about the harassment but no action was taken. The Board said that FT had "contributed to the tension" when the issue at hand was how LT should be disciplined for the degrading and sexual conduct that everyone agreed had occurred.

- The retained attorney found that there was a "hostile work environment" existed and that LT had no remorse. At the hearing, LT blamed me for "leading him on" and admitted that he hadn't "been the good boy [he] was supposed to be." The Selectmen decided that the workplace must not have been "that hostile" if LT had at one point recommended me for the deputy EMA position, even though last year LT took a position *against* me being EMA deputy. LT also announced, "I'm not saying I'm sorry," and the Board of Selectmen said nothing in response.

31) (C) The day after LT's disciplinary hearing, my attorney requested my reappointment to the EMA position due to LT's suspension. Instead the Town gave the position to two men, neither of whom had experience or training in emergency medical care, whereas I had worked as the Deputy EMA Director for two years and had been recommended to take over when LT did not meet deadlines.

32) (C) On 8/6/2011, I attended Town's mandatory sexual harassment training. I was glared at by LT and got nasty looks from him. No one took any action to keep him away from me or staring me down. I also learned that LT told other co-workers that I was "coming after [them] next" or was "not to be trusted." This is due to the Town showing my entire complaint not just to LT, but also, I believe, to NN. The harassers should have only been shown the material about them, not everything that I had reported.

33) (C) On 8/8/2011, at the Selectman's meeting, LT was allowed to publically rail against me. LT said that I had hired a lawyer who "won a million dollar lawsuit against the City of Westbrook" as if I was a gold digger. No one pointed out that LT had violated numerous Town policies and that retaliating against a victim was yet another violation. When LT protested that he had lost positions with the Town, the Board rushed to assure him that he still had all his major paying positions (the budget committee, ballot clerk, and driver, when needed for the DPW). When the issue arose about

approving $25,000 for attorney fees to the town counsel, the Selectmen said that if the fees were not approved, that I would "run roughshod" over the town, as if *my* conduct had caused the fees.

34) (C) On 8/23/2011, the Town wrote a letter to my attorney stating that it felt it had done all it needed to do and that it was ending the tolling agreement[3] we had entered into. Rather than ask me whether I felt all the issues were resolved, it just made that announcement, which ended the pause on filing deadlines that had allowed the parties to talk things out. The Town just ended the discussions and stay on deadlines, forcing me to file with the MHRC so I don't miss any deadlines.

35) (C) On 9/11/2011, I drove to the Fire Station and saw that LT's truck was parked in the Department parking lot and still displayed EMA Director plates even though he had been suspended. I did not attend the 9/11 ceremony because LT was there. I spoke with Chief DE about this and asked why LT was wearing his [redacted] uniform to a department event. DE reported this to the Selectmen.

36) (C) On 9/14/2011, I was at the station when I saw LT's truck pull up giving him a straight view of where I was. After 15-20 minutes of him just sitting in his truck and staring at me, the Code Enforcement Officer walked over and talked with LT. I took a picture of LT and asked a co-worker to walk me to my car so I could leave. I contacted Chief DE who notified the Selectmen. LT told the Town that he was just there recycling, even though the recycling bins are far from where he parked. LT said he was parked facing away from the Rescue department, even though he was not On 9/16/2011, while at an arson scene on a little used road, I saw LT drive and park one driveway away from where I was and just stare for 15-20 minutes, which was witnessed by others. I took a photograph of LT and then he drove away. I told Chief DE about this and he told me to write it up.

37) (C) On 9/16/2011, my 7 year old son was upset because LT's grandson told him that they could not be friends anymore because I had gotten his grandfather fired from the fire station. My son asked me why I would do such a mean thing. I am devastated that my son is being subjected to this harassment because I reported LT's offensive behavior. All of these additional incidents of retaliation have been reported to the Town but LT had received no further discipline that I am aware of.

38) (C) Lastly, I am still not back to work even though I have been cleared to return to my regular hours. The Chief is still waiting to hear back what he can hire me back to do and at what pay rate. I believe keeping me out of work despite being cleared to return is retaliation on Respondent's part.

Respondent's Answer to Complainant's MHRC Complaint

39) (Respondent, hereinafter "R") The Complainant had served a written notice on February 16, 2011, alleging for the first time that she was a victim of "a series of offensive acts" that she believed constituted "gender harassment." The Town responded immediately by hiring an attorney to conduct an investigation. As a result of that investigation, the Town suspended LT for one year from his position as the Town's EMA Director and from his involvement with the Town's fire and rescue services. LT has been with the Town's fire department for about forty years. He has been appointed to serve the Town in some other areas, including the Town's Finance Committee and Zoning Appeals Board, positions that were not affected by this suspension. Each position is compensated at

[3] The Complainant and Respondent had signed a Tolling Agreement – an agreement to pause all lawsuit filing deadlines so the parties could attempt a resolution – in March 2011.

the rate of $10 per meeting attended. The Town has received no complaints similar to those lodged by Complainant by co-workers against LT while he has been serving in these other capacities

40) (R) Another EMT who was involved in a number of Complainant's allegations of inappropriate conduct, NN, resigned from the fire department during the attorney's investigation of these complaints. After receiving Complainant's February 2011 complaint, the Town hired an individual to conduct sexual harassment training for all the volunteers on the fire department, as well as Town employees. The Town [redacted] fire department is, at this point, all volunteers or per diem employees. There are no other employees of the fire department and currently there are no supervisory level positions approved for the department other than the Fire Chief.

41) (R) The Town entered into a tolling agreement with Complainant and her attorney on March 22, 2011, with the hope that it could work with Complainant and her attorney to resolve this matter. Unfortunately, the continuing demands, complaints, new allegations of retaliation, etc., quickly depleted the Town's legal budget. Thus, a decision was made to end the tolling agreement so that the formal complaint the Town anticipated would be filed resulting in the assignment of defense counsel by the MMA Pool, which is now too alleged by Complainant to be an act of retaliation against her.

42) (R) Those parts of the exhaustive chronology that are beyond the 300 day period for filing a complaint with the Commission, even as tolled by agreement, essentially all pertain to inappropriate comments made to Complainant, or in her presence, by LT. To the extent the complaint includes an allegation against NN, he voluntarily resigned during the investigation, which effectively limited the ability of the Town's investigator from investigating NN's incidents. Selectman SS denies that Chief PF ever reported the incident involving the focusing on a female patient's chest. Statements attributed to Selectmen SS in Complainant's chronology, are all denied other than him saying that Chief DE was incapable of effectively supervising either Complainant or her husband because of his close personal relationship with them. The Selectmen found that it could not depend on the DE to act in the best interests of the Town, instead of helping subordinates who were his friends.

43) (R) In October, 2010, the Town ended the stipend system for substitutions for the Chief and hired two per diem EMTs, a decision made for financial reasons and to ensure prompt response time. It did result in a loss of stipend money being paid to Complainant as a substitute for the chief. That, coupled with her inability to go on ambulance runs and earn that stipend, due to work limitations, essentially eliminated her ability to earn stipends from the Town.

44) (R) A similar issue arose when Complainant, in her capacity as Deputy EMA Director, was directed to file necessary paperwork with FEMA for the Town to obtain disaster relief funds. Her failure to provide required documentation for hours worked by members of the Fire Department, including herself and her husband, resulted in the Town receiving no reimbursement for money paid to its volunteers. While Complainant claims that the Selectmen would not talk to Chief DE, he indicated that he would repeat anything said to whomever he felt like.

45) (R) Because Complainant has been on light duty restrictions since she filed a workers' compensation claim in 2009, she not been able to function as an EMT on the ambulance runs, due to a 7 pound lifting restriction. When the Town's workers' comp carrier, the MMA, suggested that the Town find some light duty work for 4-6 hours per week for the Complainant to do, Chief DE began assigning her clerical tasks, as an hourly position and then he unilaterally increased her hours to 10-12 hours per week. There is no funding in the Town's budget for an hourly clerical worker and no such position ever existed. When DE was told to reduce Complainant's hours back to the agreed 4-6 hours per week, she alleged that this was

an act of retaliation. The Town is not in a position to create a new position for Complainant simply because those former stipend opportunities are no longer available to her.

46) (R) With regard to Complainant's accusations of inappropriate comments by others in the Fire Department that she claims constituted a hostile environment, the Town received no such complaints from Complainant until after she raised a complaint of "gender harassment" on 2/16/2011. At LT's disciplinary hearing, two complaints of reports against him were found in his .file, though they appeared to have been simply stuck in the file loose, and were not punched and filed in chronological order as the rest of the file was, raising questions about when these complaints were actually placed in his file. There is no record in LT's file indicating that he was ever counseled by either Chief DE or Chief PF (Complainant's husband) for comments LT made or other conduct on his part that was alleged to contribute to a hostile environment, or given warnings or threats of discipline at any time. The Select Board had not been made aware of the complaints found in his file at or near the time the dates on them would indicate they were placed there, and received no notice of any complaints of a hostile environment by Complainant until her correspondence of February 16, 2011.

47) (R) The Town denies Complainant's claims that she has been denied her former position as Captain in the Fire Department because of her gender. The Town has not authorized the award of any officer's positions within the Fire Department currently other than the Chief's position, and this decision affects males and females equally.

48) (R) Regarding Complainant's claim that she has been denied pay by the Town, we are aware of only one time when she was not paid for some period of time and that was due to a clerical error, which was rectified when it was discovered. Other times when her pay may have been delayed because of irregularities in the form that was filed by former Chief DE, or when it was not received before the deadline for processing. In such cases, the pay was delayed, but not denied. While admitting there may have been an occasional delay in Complainant receiving her stipend, the Town denies that she was ever denied any money she was due, or that it had to do with her gender or prior complaints.

49) (R) As to Complainant's complaints of retaliation found in her amended Complaint, nearly all relate to LT. On one occasion she alleges that LT parked his vehicle outside the bay of the fire department when he knew she was present and sat in his truck "staring" at her. The Town spoke to another person who was present and he denied seeing LT do anything inappropriate or threatening. A report of investigation of this incident had been submitted [in MHRC file].

50) (R) In another incident, Complainant alleges retaliation because LT was "allowed" to speak at a public Town meeting (*not* a Selectmen meeting) and say something about her. This meeting was overseen by a moderator, not any Town official. It is not retaliation just because a citizen disputes Complainant's allegations against him in a public forum. LT never mentioned Complainant by name and he did not "publicly rail against" her.

51) (R) Complainant also complains of LT wearing a Town fire department t-shirt and having a license plate frame identifying him as EMD Director. These items are not issued by the Town and it had no role in him obtaining such items, although he Town understands that the license plate frame has been removed. With respect to the memorial service on 9/11, this event was open to the public and LT's suspension from official duties at the fire department did not preclude him from attending it as a citizen of the Town. LT serves as a volunteer for other Town committees and Complainant could see him at public buildings to register a vehicle or other use of other services, including the recycling

bins in the parking lot outside. The Town cannot guarantee that Complainant has no contact whatsoever with LT while in the Town or Town buildings used by members of the public, or that every such contact can be appropriately characterized as an act of retaliation against her.

52) (R) As to those other events listed in Complainant's lengthy chronology as occurring from 2010 to the present:

1/24/10 - Complainant alleges that EMT Mr. NN examined a 9-month pregnant patient's vagina during a rescue run to Maine Medical and later commented that he loved his job. The Selectmen have no knowledge of this incident. NN resigned from service with the Town in May2011.

Jan-Apr 2010 - Complainant alleges that LT would ask male members of the department a joke regarding penis size during meetings. She alleges that Chief PF brought this issue to Selectmen SS. But there is no record in LT's personnel file that Chief PF took any action during these incidents. SS also denies that in April 2010 that he "suggested [Complainant] was faking [her] injury," or that he spoke to her about being singled out after the Selectmen received a report that she was in command at a rescue scene and was "lying to worker's comp about her injury."

May 2010 – The Complainant alleged that she did no receive her entire EMS stipend pay and that she had been deleted as the EMS Administrator. According to the state report, the Complainant only participated in two runs and was not listed on the duty calendar at all for the month of April. Access to the EMS run database is between the Chief and the State of Maine. The Selectmen have control over that. However, if someone is going to be out for eleven months, it only makes sense to remove them from the active roster and as a database administrator. Complainant also complained she was not given keys to the new lock for three months and did not receive new radios but why would she need new keys or a new radio while out on leave?

6/7/2010 – Complainant makes numerous allegations about NN's behavior at a meeting at the station, including showing pictures his wife's breast augmentation While she alleges that she complained to Acting Chief YY, the Selectmen are not aware of this incident and never received any complaint from the complainant or YY.

July 2010 – Complainant alleges that she was not paid her officer stipend while she was out on medical leave, while men were paid while they were on leave. Records show that Selectmen withheld her officer stipend because she vas on Worker's Comp and not performing the duties of an EMS Officer. Selectmen were also concerned that receiving the stipend would impact her Worker's Comp weekly payment. Complainant was paid her full officer stipend in December 2010. Acting Chief YY and DE also received their second half officer stipends at the same time that she did.

August 2010 – Complainant alleged that she was harassed because she had to do light duty while no men on Worker's Comp had to. However, Worker's Comp never requested any other employees have a light duty assignment. If Complainant believes that this is harassment, she needs to take it up with the Worker's Comp Board. Notably, as Complainant admits, she was specifically told by Worker's Comp that her weekly wages are from the Town did not matter since Worker's Comp guarantees that she will get the same weekly amount,. The Selectmen also deny that they required Complainant to check in with the front office "girls" whenever she entered or exited the building.

September 2010 – Complainant alleged that she was directed by Chief YY to do an inventory of the loft in the firehouse and that this required her to work in adverse conditions. The Complainant left a note for the Chief and then went home, which is exactly what she should have done.

9/9/2010 – Complainant states that she was not reappointed to as Emergency Management Deputy Director. However, per Maine statutes, all terms of appointment are for one year with no guarantee of reappointment under the law. The reason why the Complainant was not reappointed was because she failed to complete her duties regarding accurate and timely completion of the FEMA forms .Complainant also alleged that large portions of her personnel file were missing. While Respondent is unaware of any documents being removed from Complainant's file, it was clear that there was a complete lack of process and accountability regarding personnel files which is why the Selectmen adopted a new policy requiring all files being moved to the Town Clerk's vault.

12/8/2010 - Complainant alleges that the Chief asked the Selectmen for her light-duty job description and why no men were assigned light duty. First; there is no Town position for light-duty, therefore no job description. It was at the request of Worker's Comp in order to assist her with rejoining the workplace. The specific activities of this light duty are at the direction of the Chief and they have had no say in the contents of her light-duty assignments.

12/22/2011 - Complainant alleges that she received a letter from the Town's Worker's Comp provider reducing her weekly rate by 50% and claimed that this was discrimination because no men previously on Worker's Comp were required to do light-duty and received their rate reduced full rate. The Town did what they were advised to do by MMA Worker's Comp. The Complainant also stated that in January she asked Chief DE to review her personnel file but that he was refused access to those file by the Selectmen. However, Maine law provides that "upon written request" a copy must be provided. No such written request was ever received by the Town.

February 2011 – The Complainant alleged that she had not yet received her appointment as EMS captain. However, the Selectmen received written advice from an attorney advising them not to approve any officer appointments in Fire and EMS. The Selectmen have followed counsel's advice. In response to Complainant's claim that she was delayed payment for light duty work, we can only assume that this involves the January 24th time sheets discussed elsewhere.

2/24/2011 – Complainant sends a letter alleging that she was not paid for the week of January 24th, which was the timesheet that was misfiled and will be discussed further in the entry for 2/24/2011. The Town has no knowledge about the alleged six hang-up phone calls she received on 2/24/2011, or the unknown SUV that was seen near her home on several occasions.

3/9/2011- Complainant alleged that a Captain said to her, "When I saw you I wanted to hug you but I don't want to get brought up on harassment charges," and that she filed a complaint about this with Chief DE. While there was a complaint about this in that Captain's file, there is nothing in the file to show the Chief took any action. The Complainant's entry for 3/14/2011 alleges that she had not been paid for the weeks of February 21st and 28th, and March 7th. However, the Town's standing policy has always been that all time sheets must be in by noon on Tuesday in order to make onto the warrant that is approved on Thursday The three time sheets referenced above were all submitted on Wednesday, meaning each was paid a week after they had been submitted. The Complainant was issued two payroll checks on 2/24/2011 that were unable to be processed because the routing

numbers on both checks were damaged and unreadable. The Town has never had this problem before or since so our conclusion is the checks were damaged while in Complainant's possession.

3/21/2011 –The Complainant stated that on 3/21/2011 the Selectmen notified Chief DE that he should limit her hours to 4-6 per week, even though she had previously worked 6-14.5 hours per week. During the week of 1/15/2010, DE unilaterally increased Complainant's hours. For the next six weeks she worked those hours until the Selectmen noticed this and reminded the Chief that 4-6 was the limit specified by the MMA. While Chief told her that there was plenty of work to be done, we had to remind him that there were no funds allocated in the budget for any hourly wages.

3/24/2011 – Complainant states that she was not paid for the weeks of January 24th and 30th. After being off for several months, Complainant returned to light duty work in January 2011. Chief DE had documented an agreement that called for the Complainant to work 8-10 hours per week instead of the 4-6 specified by MMA. Second, the agreement specified that the Complainant "perform light duties as she sees fit." These two time sheets were held by the Selectmen while they checked with MMA regarding these issues. After the MMA responded, the Complainant was paid on 3/31/2011.

7/13/2011 –A disciplinary hearing was held for LT on 7/13/2011. LT said that he had never received any warnings from anyone that his behavior was considered to be harassing. The Selectmen reviewed LT's file found no discipline or warnings in it. Therefore, they determined that a one year suspension was in order. Had there been evidence of prior warnings, LT would have been fired. Chief DE and the Complainant's husband, former Chief PF, were not interviewed as part of the investigation because it was believed that they would be less than candid given that DE was a close family friend of the Complainant and DE has openly admitted that he shared with her details of privileged management conversations he had with the Selectmen.

7/14/2011 – The Complainant alleges that she did not get appointed to the EMA Director or Deputy positions because she is a woman. While the Selectmen did appointed two men to the positions, it had nothing to do with gender. They consulted with a number of other municipalities who had the Road Commissioner serving as the EMA Directors, which makes sense since almost all incidents the Director has to deal with involves damage or obstruction to town roads. And since the major role of the EMA Director is to coordinate other Town resources during a disaster, the Selectmen appointed the Deputy Fire Chief as the Deputy EMA Director. The Selectmen actually met with the York County Deputy EMA Director to insure that these appointments were not problematic and were told that the appointees have one year to complete the necessary training and certifications.

8/6/2011 - Harassment training was conducted by an expert hired by the Town. The Complainant, her husband, and LT attended. Complainant alleges that LT leered at her, gave her nasty looks, and that the Selectmen took not action to keep LT away from her. To the contrary, the Selectmen knew that the Complainant and LT were both there and they warned the consultant of that fact to make sure they were not in the same breakout group. All Selectmen also kept an eye on both parties and did not see LT leer or stare at the Complainant. The Complainant also alleges that the chronology provided by her attorney has been shown to LT, NN, and to others. However, after the Selectmen first received and reviewed a copy of the document from their attorney, it was sealed and placed in the Town Clerk's vault and was not shown to anyone. We do not know what other documents the Town's attorney may have shown to LT or to NN while he was interviewing them.

8/18/2011 – The Complainant also alleged that at a Selectmen's meeting that LT was allowed to publicly rail against her While she alleges that LT protested publicly that he had lost his positions with the Town and that the Selectmen "rushed to assure him that he still had all his major paying positions," LT's suspension from all Fire, EMS and EMA duties in fact represented 96% of his total 2010 earnings from the Town. LT's compensation from his remaining positions (ballot clerk, Appeals Board and Financial Advisor Board) are each a $10 per meeting stipend, a total of $147 in 2010. Complainant also alleged the Board attacked her by saying that if voters did not approve more attorney's fees for the Town's counsel that she would "run roughshod" over the Town. I was the attorney who made that remark and it referenced only the Complainant's attorney, not her.

9/14/2011 – The Selectmen were told by Chief DE about a call he had received from Complainant regarding her seeing LT at the Town parking lot and him staring at her for 15-20 minutes. LT, the Code Enforcement officer and Chief DE were each asked to provide written statements, as was the co-worker Complainant had asked to walk her to her car. After receiving written statements from everyone except the Complainant, an investigation concluded there were no reasonable grounds to believe that LT had acted in any way to threaten her. Several days after the report was issued, a Complainant's statement was received, which she claimed she gave to Chief DE, who said he never received it. After reviewing her statement, no conclusion could be reached given the conflicting statements from the Complainant and the Code Enforcement officer regarding LT's actions.

9/16/2011 – Complainant reported that LT was near an arson scene where she and other department members were present and that he sat and stared at her. However, if LT was in his own vehicle on a public road it is not clear what responsibility the Town has regarding this event. Since he is now on suspension, he cannot respond with the Department, but it is not unreasonable to expect to see him observing their events as a private citizen, especially after 40 years with the fire department.

September 2011 – Lastly, the Complainant alleged that she is still not back to work "even though [she] have been cleared to return to [het] regular hours." This is completely false on a number of levels. First, she never had "regular hours" nor did she have a "pay rate." She was paid solely by stipends aside from the hourly pay rate she receiving doing light duty at the request of Worker's Comp. Second, the Complainant has a significant lifting restriction that prevents her from meeting the physical requirements of the volunteer EMT position. On 10/7/2011, the Town sent a letter to Complainant offering to return her to a position as a volunteer riding as the third EMT.

Complainant's Reply to Respondent's Answer

53) (C) By "noting" that Complainant filed a MHRC complaint dating back to 2000 but did not file a written notice of "gender harassment" until February 2011, Respondent is blaming the victim for trying to tough it out. She should be rewarded for the years she afforded Respondent to take corrective action that it chose not to take. Moreover, their suggestion that they did not know about the harassment and did not receive prior written complaints is false. Her personnel file contained several written complaints made well before 2011 and her chronology makes clear that both Fire Chiefs and the Selectmen were aware of years of conduct constituting gender harassment. She spoke also with Assistant Chief YY about NN looking at her with elevator eyes, introducing her as the "ex-Chief's wife," and asking her to tell everyone about her "blonde moment," and YY said he "was giving [NN] enough rope to hand himself. A report to the Assistant Chief constitutes notice to the Town per the department's chain of command.

54) (C) While there is the question of whether the Town's response to the Complainant's complaint in February 2011 was prompt and appropriate remedial action, it took no action in response to her other reports and therefore it has no defense. Indeed, as LT stated at his disciplinary hearing, no supervisor ever told him anything he was doing was wrong. And none of the Fire Chiefs, aside from the Complainant's husband, have taken any action, aside from Chief DE telling LT to stop talking after he made a comment about a "crazy bitch" trying to kill herself.

55) (C) With respect to the investigation of the Complainant's February 2011 complaint, the Town's action was not prompt at all and the remedial response was not appropriate under the circumstances. She was not interviewed until March 25th and LT's disciplinary hearing was not held until July 13th. LT was only removed from the Fire Department for one year with assured reinstatement. LT also remained on the Town Finance Committee and Zoning Appeals Board. While the compensation for these jobs is quite small, it is more about power than money in terms of what will send a message to him. LT was also unrepentant at his hearing and stated, "I'm not saying I am sorry."

56) (C) With respect to NN, while it is true that he quit after the Town hired an attorney to investigate the Complainant February 2011 report, the fact is that he was allowed to harass the Complainant for over a year before the Respondent took any action, even though NN's conduct was repeatedly reported by the Complainant and some of it (showing naked pictures on his phone, referring to the Complainant in front of others as the "ex-Chief's wife) occurred in front of management.

57) (C) Although the Town appears to minimize the volume of reports the Complainant made to officers, chiefs and the Selectmen by asserting that the real problem is the close relationship between Chief DE and her, Respondent neglects to mention that after Chief DE left the position for medical reasons, which then went to the Complainant's husband, and then to Chief YY, DE was then rehired by the Town as Chief. They would not have done this if they believed that he was so out of control that he could not effectively supervise the Complainant or her husband. Issues between Chief DE and the Selectmen did not develop until he told them they were not treating the Complainant legally.

58) (C) In response to the Town's asserted reason for the Complainant losing her position as EMA Deputy, it claims that she was directed to file FEMA paperwork for the Town and that "her failure to provide documentation" cause the Town to not get paid. They also claim that her husband "falsely reported" his time worked and that the Complainant covered that up in her paperwork to FEMA. Respondent states that this is why she lost the position and not due to her complaints about LT. At LT's disciplinary hearing he said nothing about this but rather recommended that she not be reappointed because she had missed too many meetings. There is also nothing in Complainant's personnel file about any fraud. This was never alleged until after Complainant filed with the MHRC.

59) (C) Further, the Complainant's husband's one year tenure as Chief ended on 5/1/2010, when Chief YY took over until the Town brought Chief DE back in September 2010. The Complainant had been out on medical leave since April 2010 and had surgery in May so neither she nor her husband were responsible for the FEMA application. It is also unclear how the Town can blame the Complainant for the FEMA filing when it chose to voluntarily withdraw its filing rather than simply file it without the hours that the Complainant and her husband worked, or call them if clarification was needed. The Town received no money because it did not submit an application.

60) (C) Aside from the FEMA position that was taken away from her, the Complainant was also not reappointed to her position as Captain and lost that stipend. Respondent claims that no one was

reappointed to officer positions but two co-workers told Complainant that they were sworn in as paid officers, one of them in October 2010, and the other one was also appointed within the last year.

Investigator

61) As part of the investigation, both parties were asked to supply documentation supporting their position regarding payment of the Complainant's officer stipend, which the Respondent contended was paid in December 2010. The Complainant clarified that the money that remained unpaid of February 2011 was for her light duty hours and was not related to any stipend payment. She stated that while she was paid her full yearly officer stipend on 12/30/10, her stipend payment due in July was still unpaid as of the time the next stipend pay was authorized in November 2010. She stated that all male officers were paid the following week while she did not receive a check for the stipend payments until the end of December.

62) The parties were also asked to provide support for their opposing claims as to whether any officers had been appointed in Fire/EMS after February 2011. The Complainant responded that while there were several male officers appointed before February 2011, but then all appointments were halted in order to avoid appointing her. The Respondent did note that the Complainant, along with six other individuals, were recommended and appointed as officers in January 2012.

V. Analysis and Conclusions

1) The Maine Human Rights Act requires the Commission in this investigation to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B).

2) The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action. More particularly, "reasonable grounds" exists when there is enough admissible evidence, or there is reason to believe that formal litigation discovery will lead to enough admissible evidence, so that there is at least an even chance of Complainant proving in court that unlawful discrimination occurred. Complainant must prove unlawful discrimination in a civil action by a "fair preponderance of the evidence." 5 M.R.S. § 4631.

Sexual Harassment

3) The Maine Human Rights Act provides, in part, as follows:

> It is unlawful employment discrimination, in violation of this Act . . . for any employer to . . . because of . . . sex [or] previous actions taken under Title 26, chapter 7, subchapter 5-B. . . discriminate with respect to the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . ."

5 M.R.S. § 4572(1)(A).

4) The Maine Human Rights Commission Regulations provide that harassment on the basis of sex is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual

harassment when such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.. Me. Hum. Rights Comm'n Reg. §§ 3.06(I)(1)(c) (July 17, 1999)(sex harassment in employment)

5) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57. In determining whether an actionable hostile work environment claim exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Id*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996). "The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976.

6) Accordingly, to succeed on such a claim, Complainant must demonstrate the following:

> (1) that she is a member of a protected class; (2) that she was subject to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established.

Watt v. UniFirst Corp., 2009 ME 47, ¶ 22, 969 A.2d 897, 902-903.

7) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988). In some instances, Complainant may have the responsibility for telling the alleged harasser directly that his comments or conduct are unwelcome. In other instances, however, Complainant's consistent failure to respond to suggestive comments or gestures may be sufficient to communicate that the conduct is unwelcome. *Id.* Where Complainant never verbally rejects a co-worker's sexual advances, yet there is no contention or evidence that Complainant ever invited them, evidence that Complainant consistently demonstrated unalterable resistance to all sexual advances is enough to establish their unwelcomeness. *See Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777, 784 (1990).

8) The MHRC Regulations provide the following standard for determining employer liability for harassment committed by a non-supervisor:[4]

> [A]n employer is responsible for acts of sexual [or disability] harassment in the workplace where the employer, or its agents or supervisory employees, knows or should

[4] Although the primary alleged harasser, LT, did hold the title of EMA Director at the time that the Complainant held the title of Emergency Management Deputy, the Complainant has not appeared to assert that LT ever had the supervisory authority to hire, fire, discipline or evaluate her in that Deputy position.

have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action.

Me. Hum. Rights Comm'n Reg. § 3.06(I)(3) (July 17, 1999)(sex) and§ 3.08(I)(2) (July 17, 1999)(disability). *See Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 27, 969 A.2d 897, 904.

9) The Law Court has held as follows: "The immediate and appropriate corrective action standard does not lend itself to any fixed requirements regarding the quantity or quality of the corrective responses required of an employer in any given case. Accordingly, the rule of reason must prevail and an employer's responses should be evaluated as a whole, from a macro perspective." *Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 28, 969 A.2d 897, 905.

10) Here, Complainant did establish that she is a member of a protected class, and did report what could be considered sexual harassment by co-workers over the course of her period of employment prior to February 2011, when she formally put the Town on notice that "gender harassment" was believed to have occurred.

11) The Complainant also asserts that on a number of occasions prior to February 2011 that she orally, and on a few occasions in writing, complained about comments or conduct from co-workers that she believed to be harassment based upon her sex. This would increase the scope/number of incidents of alleged sexual harassment for the Commission to consider. The Respondent generally denies any knowledge of any complaints about sexual harassment prior to receiving her letter alleging gender harassment in February 2011. Complainant is more credible on this point:

12) The Town does concede that LT's file did contain two written incident complaints, one dated 8/1/2007, the other 2/18/2009, both signed by the Complainant, which alleged that LT had called the Complainant a "bitch." The Complainant also provided to the MHRC what is purportedly a copy of a written complaint she filed on 7/4/2009 wherein she alleged that a male EMT, NN, had allegedly exposed a female patient's breasts and "leered" at her. The Respondent denies that it ever received a copy of that written complaint or became aware of the allegation until the investigation that ensued following the Complainant's February 2011 letter.

    i) While Respondent acknowledges two written complaints were found in LT's personnel file, they imply that these may have been added to his file after the fact, presumably by the Complainant or someone else acting on her behalf, because the two complaints "appeared to have been simply stuck in the file loose, and were not punched and filed in chronological order as the rest of the file was, raising questions about when these complaints were actually documented and placed in his [LT's] file." The Respondent also noted that there was no record that Chief DE or the Complainant's husband, former Chief PF, even counseled, warned or disciplined LT as a result of these complaints. However, the Respondent has provided no evidence that these two complaints were fabricated or inserted into LT's file after the fact by the Complainant or someone else. Therefore, it must be presumed that they were authentic and were filed in or around the time the complained about event occurred.

    ii) While all three of these written reports occurred well before the 300 day filing period that preceded the Complainant, even as adjusted by the tolling agreement, they may still be considered in evaluating whether the Complainant was subjected to a hostile work environment based upon her sex so long at least one other incident contributing to that hostile

work environment occurred within the prescribed pre MHRC filing period. Both parties agree that the operative date for determining the outset of the 300 day period is 5/25/2010.

b) The Complainant alleged in her MHRC charge that the following 5/25/2010, additional events in June 2010 contributed to the hostile work environment based upon her sex. The Respondent denies any knowledge of those incidents.

i) Complainant reported an incident in June 2010 when co-worker NN supposedly showed pictures of his wife's new breast augmentation to various co-workers and officers. She also alleged that, later that same evening, NN looked at her chest and made a comment about the Complainant not needing help with "fake boobs." The Complainant stated that within the next couple of days that she reported this to acting Chief YY, who allegedly advised her that he (YY) was "giving NN enough rope to hand himself," which was also what YY supposedly said a few days earlier after the Complainant complained to YY about NN introducing her to a vendor as the "Chief's ex-wife." Respondent denied knowing of this complaint and states that it was never notified of the incidents by acting Chief YY or the Complainant.

ii) However, by the Complainant making a reporting these vents to her supervisor, she complied with the Town's written policies on reporting sexual harassment. The fact that acting Chief YY did not pass on the report to the Selectmen does not relieve the Respondent of legal responsibility since the Town had an obligation to ensure that its officers had the appropriate training to recognize and report potential sexual harassment to the proper individual or entity.

c) In sum, while it does appear that the vast majority of the alleged sexually based conduct and comments that the Complainant alleged contributed to a hostile work environment based upon her sex occurred prior to the 300 day period that preceded her filing her MHRC complaint, since at least one act of alleged sexual harassment did occur within the filing period, other alleged prior acts of similar sexual comments and conduct can be considered in evaluating whether a hostile work environment existed.

13) Complainant has established that she was subjected to unwelcome sexual harassment that the harassment was based upon sex. Much of the complained-about conduct related to sex and was directed at her because of her sex. Complainant also has established that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment, and that the sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so. Reasoning is as follows:

a) LT also did not dispute the vast majority of the many sexual and offensive comments attributed to him. As noted in the report from LT's disciplinary hearing, LT "candidly acknowledged he made many of statements and engaged in much of the conduct alleged by the Respondent," that included, in addition to the aforementioned "bitch" comments, sexist jokes, graphic references to male and female anatomy, as well as crude and inappropriate comments about the Complainant's body. LT's conduct alone would certainly have risen to the level of a hostile work environment.

b) In June 2010, NN subjected Complainant to sexual harassment by showed pictures of his wife's breasts, then looked at Complainant's chest and said, "Not that you need any help with fake boobs." That same month, he introduced the Complainant publicly not by her name or rank but

as the "Chief's Ex-wife." The fact that NN later resigned during the outside attorney's investigation into the Complainant's allegations of gender harassment suggest that NN may have engaged in the conduct and comments alleged by the Complainant and resigned rather than face discipline.

14) It is found that the Complainant was subjected to a hostile work environment due to severe and/or pervasive sexual and/or sexists comments and conduct that occurred over her period of employment. The next query is whether, as the Complainant alleges, the Respondent failed to take immediate and appropriate action on her complaints.

15) Complainant alleges that the Town had notice of her claims of sex/gender harassment and discrimination before February 2011.

a) As noted above, there were a number of instances that Complainant did report to the Town prior to February 2011:

i) The Town does concede that LT's file did contain two written incident complaints, one dated 8/1/2007, the other 2/18/2009, both signed by the Complainant, which alleged that LT had called the Complainant a "bitch."

ii) The Complainant also provided to the MHRC what is purportedly a copy of a written complaint she filed on 7/4/2009 wherein she alleged that a male EMT, NN, had allegedly exposed a female patient's breasts and "leered" at her.

iii) Complainant reported an incident in June 2010 when co-worker NN supposedly showed pictures of his wife's new breast augmentation to various co-workers and officers. She also alleged that, later that same evening, NN looked at her chest and made a comment about the Complainant not needing help with "fake boobs." The Complainant stated that within the next couple of days that she reported this to acting Chief YY, who allegedly advised her that he (YY) was "giving NN enough rope to hand himself," which was also what YY supposedly said a few days earlier after the Complainant complained to YY about NN introducing her to a vendor as the "Chief's ex-wife."

b) Respondent states that it was never notified of the incidents by whoever was acting chief when they occurred, or the Complainant. However, by the Complainant making a reporting these vents to her supervisor, she complied with the Town's written policies on reporting sexual harassment. The fact that acting chiefs did not pass on the report to the Selectmen does not relieve the Respondent of legal responsibility since the Town had an obligation to ensure that its officers had the appropriate training to recognize and report potential sexual harassment to the proper individual or entity.

c) It does not appear that Respondent took any action – in 2007, in 2009, in June 2010, or anytime until after Complainant's February 2011 written complaint to the Town - to counsel NN or LT, or to hold trainings for its staff. This lack of action or training is hard to understand, given that LT's file already had two written complaints about him using sexist language. It may be that the complaints in LT's file were never passed up the chain of command, but it is clear that LT was not counseled, much less disciplined. This would likely have led LT (and his colleagues like NN) to conclude that such comments might be tolerated in the workplace.

d) While this may have resulted primarily from a lack of training by Fire and EMS officers in how to receive and process sexual harassment complaints from subordinates, as opposed to any conscious effort by the Town to ignore such complaints, an Officer making the decision not to take action on obviously inappropriate sexual behavior (such as NN showing nude pictures of his wife to co-workers, including officers) in order to "allow [NN] enough rope to hang himself" can in no way be considered "appropriate" or "corrective" action. In this case no investigation whatsoever occurred in response to either complaint and LT was never told by any supervisors that his comments were deemed to be offensive. While LT presumably would know that use of this term would likely cause offense, it was the Respondent's responsibility upon receiving the Complainant's complaints to at least investigate and determine whether any discipline was warranted. It is also clear that the Complainant's allegation about NN's purported conduct in needless exposing a female patient and "leering" would also warrant an investigation and likely bolster to her claim that a hostile work environment existed.

e) The Town's failure to act to address Complainant's reports of sexual harassment prior to February 2011 is neither immediate nor appropriate action by Respondent.

16) Complainant also argues that Respondent failed to take immediate, appropriate action after it received her February 2011 formal written notice of gender discrimination, because its actions to address her primary harasser were inadequate.

a) In support of this claim, the Complainant noted that it took more than a month for her to be interviewed by the Town's attorney regarding these complaints and that LT's disciplinary hearing did not take place until July 2011. While the term "immediate" is not defined under the statute, the time frame between Complainant's letter in February 2011 and LT's disciplinary hearing in July 2011 is not found to be unreasonably long given the years of events chronicled by the Complainant and the number of separate incidents referenced by her as part of her complaint of gender discrimination that needed to be investigated by the Town's attorney.

b) The Complainant also emphasized the minimal level of discipline, a one year suspension from some of LT's positions, but not from others. Complainant asserts that even if Respondent's claim that LT lost 96% of his total earnings from the Town as result of the suspension is correct, that the discipline is still too lenient to be effective given that LT is more concerned "with power than money." The Complainant also emphasized that LT's refusal to say he was "sorry" at the disciplinary hearing is further evidence that the Town did not send a strong enough message by this level of discipline.

c) However, it is found that the level of discipline imposed by Respondent against the alleged harasser, LT, is found to be appropriate given the lack of any prior progressive discipline or warnings for any conduct or comments during his 40 years with the department. A loss of 96% of his yearly earnings that resulted from the one year suspension is clearly significant. Further, unlike most employee discipline, LT's had the additional stigma of having the details of his alleged misconduct and imposed discipline open to the public, accentuating his punishment.

17) It is found that the Town is liable for subjecting Complainant to a hostile work environment based on sex and that it failed to take prompt immediate corrective action in after Complainant first reported sexual harassment.

Sex Discrimination/Retaliation

18) Complainant also claimed that her delays in pay, and her assignment to light duty work while on workers' compensation leave, and the decision not to hire her back into a certain position, were all part of a pattern of sex/gender discrimination and/or retaliation.

19) The analysis for sex discrimination in terms and conditions of employment is as follows:

a) 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).

b) 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).

c) 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.

d) 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.

e) 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.

20) Since what the Complainant reported conduct that arguably have violated the MHRA as well, she would also be protected from retaliation. The MHRA also 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 MHRA 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 defines unlawful discrimination to include "punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act. . . ." 5 M.R.S. § 4553(10)(D).

21) The Maine Human Rights Commission regulations provide as follows:

> No employer, employment agency or labor organization shall discharge or otherwise discriminate against any employee or applicant because of any action taken by such employee or applicant to exercise their rights under the Maine Human Rights Act or because they assisted in the enforcement of the Act. Such action or assistance includes, but is not limited to: filing a complaint, stating an intent to contact the Commission or to file a complaint, supporting employees who are involved in the complaint process, cooperating with representatives of the Commission during the investigative process, and educating others concerning the coverage of the Maine Human Rights Act.

Me. Hum. Rights Comm'n Reg. 3.12 (July 17, 1999).

22) The analysis for retaliation is as follows:

a) In order to establish a prima-facie case of retaliation, 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 employer actions "that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be 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. One method of proving the causal link is if the adverse action happens in "close proximity" to the protected conduct. *See id.*

b) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily 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 nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See 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 the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 2013 WL 3155234, *16 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).

23) In this case Complainant alleges that she was subjected to sex/gender discrimination and retaliation after reporting sexual harassment. The vast majority of the Complainant's allegations of sex discrimination and retaliation by the Town relate to decisions made by the Town's Selectmen during the course of her worker's comp leave (she had significant physical limitations which resulted in surgery and work restrictions in May 2010) and her return-to-work. Complainant alleges that how she was treated with regard to scope of her duties while on restricted/light duty, the amount of hours to be worked, and the speed of reimbursement for her light duty work all were handled differently (and worse) because she was female and also because she complained of sexual harassment.

24) At the outset it is noted that it is highly unlikely that any retaliation that occurred prior to February 2011 could have been related to the Complainant's prior reports of sexual harassment, because apparently none of the Town Selectmen – who had control over the terms and conditions of

Complainant's employment – were aware of her complaints yet. While it is true that the Town may still be legally responsible for the existence of a hostile work environment that resulted from acts of sexual harassment that were reported to fire chiefs but not properly reported/addressed by them, the Town's Selectmen conversely could not have engaged in any retaliation based upon those prior reports of alleged sexual harassment about which they had no knowledge.

25) Even so, the Complainant had not established that either her sex or prior reports of sexual harassment was a likely factor in any of the Town Selectmen's decisions made during the course of Complainant's Worker's Comp case.

a) Many of these issues were ultimately resolved in the Complainant's favor, aside from the requested increase in the amount of light duty hours. The Town did not engage in retaliation merely because some disputes arose over the course of her Worker's Comp case. For example, while the Complainant viewed as retaliation being reported and interviewed after she was seen at rescue scene after she was seen there while on light duty (and a weight restriction of seven pounds), the Town had a legitimate right to know whether one of its employees had been working beyond limitations given that the Town would presumably have been open to liability for knowingly allowing her to work while under restrictions.

b) With respect to her non-reappointment as EMA Deputy in September 2010, at that time she had not even made her formal complaint of gender harassment to the Town, so it could not have influenced their decision on her reappointment. It also was not likely her sex since she obtained the post to begin with. Although the Complainant may not have been provided with the all criteria considered by the Selectmen in their decision not to reappoint her, there is little reason to believe that it was the Complainant's sex or her prior reports of sexual harassment. With respect to her non-reappointment following LT's suspension in July 2011, the Selectmen's rationale for not re-appointing her would not necessarily have changed simply because LT was disciplined for sexual harassment. The Town's explanation that it consulted with other municipalities and opted for an EMA Director with a Road Commissioners background rather than an EMT/Fire background appears to be a reasonable and non-discriminatory, especially if the Complainant was in any way responsible for the Town's inability to obtain reimbursement form FEMA during her tenure, which the Complainant disputes.

b) None of the evidence provided by the parties establishes that it is at least as likely as not, the Maine Human Rights Acts "reasonable grounds" standard, that any of these likely constitute sex discrimination or retaliation. The following addresses just some of the specific allegations found in the Complainant's MHRC chronology:

i) While the Complainant may be correct that no male co-worker had been offered light duty by the Town or the MMA, the Complainant has not established that her injury or resulting work restrictions were comparable to men who had been injured.

ii) The fact that there were occasional times that disputes arose at the amount of hours she would be allowed to work or that reimbursement for certain weeks may have been delayed, either due to late or misfiled pay sheets, or because the Selectmen wanted to discuss a novel pay issue with its MMA carrier does not equate to discrimination.

iii) Retaliation is also not found based upon the fact that the Complainant did not receive new keys or a new radio while she was out on medical leave, since she presumably would have had little if any use for these at that time. The same is true with respect to her removal as the EMA administrator while out on leave. Given that the Complainant was admittedly unable to type due to her surgery and work restrictions the Respondent would presumably leave itself open to liability if the Complainant was allowed to perform this function.

iv) Complainant alleged that at various times during tenure with the department that her files have been made available to unauthorized individuals (non-officers and Selectmen) as well as later made unavailable to her despite requests by she and Chief DE for access. Complainant has not established that any of these actions relating to her personnel file or Worker's Comp records are because of either her sex or her reports of sexual/gender harassment. Rather, it appears as though once the Town was made aware of the lax security surrounding all such employee records, including the Complainant's, it took appropriate steps to safeguard those materials in the Town clerk's office.

v) The 8/18/2011 Meeting – The Complainant also alleged that the Town (and LT) engaged in retaliation by "allowing" LT to "rail against her" at that meeting. However, as Respondent noted, as a citizen and taxpayer, LT had every right to publicly express his view that the Complainant's allegations against him were meritless and that the Town should mount a full and vigorous legal defense to the Complainant's MHRC charge and presumed lawsuit.

vi) Ending the parties' tolling agreement - The Town is free to make legitimate decisions about its legal defense and costs related thereto without any actions short of capitulation being characterized as retaliation. An acknowledgement that negotiations have proven to be unsuccessful and that financial considerations require a formal legal filing before assignment of coverage by the MMA pool is not considered to be retaliation.

vii) The Complainant also complained that she was "still not back at work even though I have been cleared to return to my regular hours." However, even if the Complainant has been cleared to return to her "regular hours" (which Respondent denies she ever had, since she her remuneration in the past had come entirely from stipends), the Complainant had offered no evidence that her significant lifting restriction (no more than seven pounds) has ever been removed or modified. The Town has no obligation to create a new position or modify the essential functions of the EMT or Fire position in order to accommodate the Complainant's current physical limitations. It is not found that the Respondent engaged in retaliation by failing to return the Complainant to her prior positions while she was still under significant work restrictions that prevented her from performing the essential functions of her prior positions.

viii) While the Complainant also complained that she had been denied her former position as Captain in the Fire Department because of her gender, the Town has not authorized the award of any officer's positions within the Fire Department (in 2011) other than the Chief's position, a decision affects males and females equally, and is therefore nondiscriminatory.

c) Complainant also alleged that the Town engaged in retaliation by failing to control LT's actions after he was disciplined. She alleged that LT gave her nasty looks and glared at her at a sexual harassment training but the Respondent disputes this. The Complainant also stated that others

told her that LT told them that she was "out to get them" or "could not be trusted." The Complainant also complained of LT still having EMA Director license plates and him attending a public 9/11 ceremony at the Fire department, with his [redacted] uniform (a t-shirt) on.

i) There is no evidence that LT was acting on behalf of the Town while any of this occurred.

ii) There is no order of protection between the parties requiring that they remain a certain distance apart or that any type of incidental contact would constitute harassment.

iii) Upon being notified of the Complainant's allegation that LT stared at her from across the public town parking lot, they investigated and interviewed all involved but were unable to reach a conclusion that LT had threatened or harassed the Complainant in any way. As Respondent noted, they do not have the legal authority to prevent LT from accessing public buildings and services that the Town offers, even if that means that he and the Complainant might occasionally cross paths. LT, as any private citizen, is presumably entitled to show up at fire and accident scenes as an understandably interested 40 year observer so long as he does not interfere or harass those on the job.

iv) While Complainant also complained that LT had told his grandson that he could no longer play with Complainant's son because she had "gotten him [LT] fired," the Town has no legal obligation or authority to tell LT who his grandson may or may not play with.

26) It is not found that Respondent discriminated against Complainant based on sex, or retaliated against her, in the terms and conditions of her employment.

VI. Recommendations

Based upon the information contained herein, the following recommendation is made to the Maine Human Rights Commission:

1. There are **REASONABLE GROUNDS** to believe that Respondent, the Town [redacted] is liable for subjecting Complainant [redacted] to unlawful sexual harassment (a hostile work environment due to her sex), and;

2. That the conciliation of the charge should be attempted in keeping with 5 M.R.S. § 4612.

3. There are NO REASONABLE GROUNDS to believe that Complainant was subjected either to discrimination in the terms and conditions of her employment because of her sex, or to retaliation because she reported sexual harassment to the Respondent; and;

4. That this portion of the complaint should be dismissed in keeping with 5 M.R.S. § 4612.

Amy M. Sneirson
Executive Director

Robert D. Beauchesne
MHRC Investigator