



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

MHRC No. E16-0181

March 22, 2018

**Helen Crabtree (Auburn)**

v.

**Central Maine Medical Center (Lewiston) &  
Maine College of Health Professionals (Lewiston)<sup>1</sup>**

### I. Summary of Case:

While Complainant Helen Crabtree was a student at Maine College of Health Professionals ("College"), an educational institution, she interviewed and was in the process of being hired for a job with Central Maine Medical Center ("CMMC" or "Respondent"). Complainant alleged that Respondent, a hospital, discriminated against her based on her religion when it failed to grant a reasonable accommodation request and later rescinded its job offer. Complainant also alleged that College discriminated against her based on her religion when it failed to grant her reasonable accommodation request and influenced CMMC's decision to rescind her job offer.<sup>2</sup> Respondent denied discrimination, and stated that granting Complainant's accommodation request year-round would be an undue burden. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based on this information, the Investigator recommends finding that there are no reasonable grounds to believe that College discriminated against Complainant based on her religion, and also finding that there are reasonable grounds to believe that CMMC discriminated against Complainant based on her religion.

### II. Jurisdictional Data:

- 1) Dates of alleged discrimination: August 31, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): April 7, 2016.

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<sup>1</sup> Complainant's complaint listed a second respondent's name as Maine College Health Professionals ("College"). Respondent provided that this entity's legal name is "Maine College Health Professions". Because Complainant did not amend her complaint, the name she used has been retained.

<sup>2</sup> Complainant named College because she believed it was involved in CMMC's response to her reasonable accommodation request and the rescission of her job offer. The record does not reflect that College had any control or involvement in the decisions made by CMMC, and Complainant conceded that College likely did not know about her request for reasonable accommodations. Given the lack of involvement by College, claims against it will not be analyzed further. Accordingly, the term "Respondent" will refer to CMMC only.

- 3) CMMC and College are subject to the Maine Human Rights Act (“MHRA”), Title VII of the Civil Rights Act of 1964, as amended, as well as state and federal employment regulations.
- 4) Complainant is not represented by counsel. Respondents are represented by Michael Messerschmidt, Esq.

### **III. Development of Facts:**

- 1) Complainant provided the following in support of her claims:

Complainant, as a student of College, applied for the “Earn As You Learn” program (“Program”) which would have provided paid part-time employment with CMMC while she trained as a Certified Nursing Assistant (“CNA”). As part of the hiring process, Complainant told CMMC that, as a Seventh Day Adventist Sabbath observer, she was unable to work from Friday at sundown until Saturday at sundown, and she requested a reasonable accommodation in her schedule. Although it had been preparing final terms for her job offer, CMMC denied her accommodation request and rescinded the job offer.

- 2) CMMC provided the following in support of its position:

Complainant did not mention her religious accommodation needs during the written application process; however, she did mention her Sabbath observer needs during the interview process. Respondent offered to accommodate her request not to work on her Sabbath from September through May. It could not accommodate the request during the summer months when there were fewer CNAs available, because it was an undue burden; Complainant would be scheduled to work a weekend shift once every three weeks, and would be responsible for swapping her shifts during that time. Complainant rejected any accommodation request that would make her responsible for arranging for shift swaps. Because she could not comply with the scheduling requirements of the position, her job offer was rescinded.

- 3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:
  - a) Complainant is a practicing Seventh Day Adventist and a Sabbath observer. Complainant’s beliefs include that she cannot work on the Sabbath, and cannot encourage others to work on the Sabbath.
  - b) On August 19, 2015, Complainant applied for the Program, indicating that she was seeking evening and night shifts, but not weekends, although she did indicate that she was willing to work weekends.
  - c) CMMC selects the participants for the Program. The Program has employment in departments that are staffed 24 hours a day, 7 days per week with the CNA staff working 24 to 36 hours per week. CMMC provided that the work schedule is posted three or four months in advance.
  - d) Complainant recalled telling CMMC that she was a practicing Seventh Day Adventist during her first interview. Respondent suggested that Complainant told it about her religious beliefs and the conflict with working the Sabbath after she was selected for the Program. Complainant requested an accommodation of her religious practice, specifically, that she not be scheduled to work from sundown on Friday until sundown on Saturday. CMMC noted Complainant’s request and considered it.
  - e) On September 14, 2015, a nurse manager (“Nurse Manager”) talked to Complainant to finalize a job offer. Nurse Manager stated that CMMC could grant the requested accommodation request until the spring, however, because Respondent had fewer CNAs available during the summer months,

Complainant would be scheduled to work one weekend every three weeks, and would bear the responsibility of swapping these shifts if she could not work them. Complainant provided that she indicated that she wanted to proceed, but that she could not actively seek to swap shifts. Respondent alleged that Complainant had not stated that she could not engage in swapping shifts.<sup>3</sup>

- f) On September 15, 2015, Respondent's employment representative ("Employment Rep.") spoke to Complainant, who shared that she could not have the responsibility of arranging to swap shifts because of her religious beliefs.<sup>4</sup> Complainant affirmed that she could not work any Sabbath shifts. Respondent believed that Complainant rejected the offered accommodation.
- g) Later that same day, Employment Rep. emailed Complainant confirming that her job offer was rescinded based on Complainant's inability to commit to the scheduling requirements of the position. CMMC provided that it had not reached the point to make formal or written offers.
- h) CMMC was able to accommodate Complainant's request from September through May. It was unable to do so from June through August because the CNA workforce was not great enough to allow for flexible scheduling and it was not reasonable to expect a nurse manager to become involved in the shift swapping process. Such a change would adversely impact the voluntary nature of shift swapping. Respondent argued that accommodating Complainant during this time would be an undue hardship. There was no one specific employee who assisted others with arranging shift swaps. Respondent stated the overnight shifts on Fridays and Saturdays are not popular shifts. Respondent believed it was acceptable to require Complainant to swap her shifts.
- i) Complainant has a sincere religious belief that not only can she not work on the Sabbath, but also that she cannot encourage others to do so. She believes that asking others to work on the Sabbath would undermine the requirement that all people should honor the Sabbath.

#### **IV. 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 Maine Revised Statutes ("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.

#### *Reasonable Accommodation Claim*

- 2) The MHRA provides that it is unlawful employment discrimination, because of religion, "to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment." 5 M.R.S. §4572(1)(A).
- 3) The Commission's Employment Regulations, Ch. 3, Section 3.10(C), provides the following standard for determining whether an employer must provide a reasonable accommodation for an employee's sincerely-

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<sup>3</sup> Respondent provided that it learned of the shift-swapping component of Complainant's accommodation request during this investigation.

<sup>4</sup> Respondent does not recall Complainant stating that she could not swap shifts based on her religious beliefs.

held religious beliefs:

C. Obligation to Make Reasonable Accommodations

- (1) The duty not to discriminate on religious grounds includes an obligation on the part of the employer and/or labor organization to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship to the conduct of the employer's business. Because of the particularly sensitive nature of refusing to hire or discharging an individual on account of his/her religious beliefs, the burden of proof that the accommodations required by the individual's religious needs impose an undue hardship to the conduct of the employer's business, is on the employer. Resolution of such cases depends on specific factual circumstances and involves a delicate balancing of an applicant or employee's religious needs with the degree of disruption imposed on the employer's business operation.
  - (2) It is an unlawful employment practice for an employer to refuse to hire an applicant for employment or to discharge an employee who regularly observes Friday evening and Saturday, or some other day of the week, as the Sabbath or who observes certain special religious holidays during the year and, as a consequence, does not work on such days, unless the employer can prove that there exists no reasonable accommodation of such religious needs or that such accommodations can only be made at the price of undue hardship.
- 4) An accommodation constitutes an "undue hardship" if it would impose more than a *de minimis* cost on the employer. *Maine Human Rights Comm'n v. United Paperworkers Int'l Union*, 383 A.2d 369, 381 (Me. 1978); *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 134 -135 (1<sup>st</sup> Cir. 2004) (Title VII). This includes both economic and non-economic costs. *See id.*
- 5) It is found that Respondent denied Complainant a reasonable accommodation for her religion, with reasoning as follows:
- a) Complainant asked for an accommodation during the hiring process based on being a Sabbath observer – she was unable to work the Sabbath and could not encourage others to do so.<sup>5</sup> CMMC considered the request and, based on its own understanding of Complainant's religion, believed it was acceptable to ask Complainant to arrange for shift swapping when it was unable to accommodate her scheduling needs (from June through August).
  - b) Complainant was clear that she could neither work on the Sabbath nor encourage others to do so. Her belief does not have to be same as the tenets of majority of Seventh Day Adventists. In this case, Complainant sincerely believes that she cannot work, or encourage others to work on the Sabbath.
  - c) Respondent believed that it suggested a workable accommodation and that Complainant rejected the offer. Respondent did not take into account Complainant's particular beliefs; CMMC based its offered accommodation based on general tenets of the Seventh Day Adventists faith.

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<sup>5</sup> The parties dispute whether Complainant told CMMC that she could not swap shifts because her religious beliefs precluded encouraging others to work on the Sabbath. Complainant was found to be credible in her religious beliefs, and in explaining that she was very up-front in telling Respondent how her beliefs impacted her availability. Based on the record, it is at least as likely as not that Complainant told Respondent that she could not seek out others to work her shift because of her religious beliefs.

- d) Respondent argued that it would be an undue burden to have someone else assist Complainant with the shift swapping process, as it would be more than *de minimus* cost on CMMC to assist Complainant with shift swaps and would divert nurse managers from performing their job duties and productivity. Respondent bears the burden of proof on this defense, and did not provide any factual evidence to support its claim. While it characterized the voluntary shift swapping as part of an accommodation, it is clear from the record that this was merely the general work rule, and not an accommodation of Complainant's religious beliefs. Moreover, Respondent does not appear to have considered any other possible accommodations.
  - e) This is a close case and is fact-specific as to Complainant's sincerely held religious beliefs. Based on the facts in the case and the "reasonable grounds" standard, it is found that Complainant would have at least an even chance of prevailing at trial.
- 6) It is found that CMMC violated the MHRA when it denied Complainant a reasonable accommodation for her religion.

*Failure to Hire*

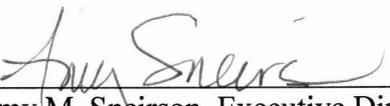
- 7) The MHRA provides that it is unlawful to fail to hire an employee because of religion. *See* 5 M.R.S. § 4572(1)(A).
- 8) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. 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).
- 9) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that (1) she belongs to a protected class, (2) that she applied and (3) met the minimum objective qualifications for the job sought, and (4) that she was rejected. *City of Auburn*, 408 A.2d at 1263.
- 10) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. 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.
- 11) Complainant established a prima-facie case by showing that she is a member of a protected class (Seventh Day Adventist), she applied for a job, she was qualified for the position, and she was rejected.
- 12) Respondent provided a legitimate, nondiscriminatory reason for its rescission of Complainant's job offer: her inability to commit to the scheduling requirements of the position.

- 13) In the final analysis, Complainant has met her burden of showing that the real reason for the rescission of the job offer and failure to hire her was her religion, with reasoning as follows:
- a) Complainant informed Respondent of her inability to work on the Sabbath based on her religious beliefs during her interviews. The Commission's regulations provide that it is unlawful to refuse to hire an individual based on their Sabbath observance "unless the employer can prove that there exists no reasonable accommodation of such religious needs or that such accommodations can only be made at the price of undue hardship." As noted above, Respondent did not meet this burden.
  - b) Respondent argued that it was not yet at the stage to give Complainant a formal written offer, however it is clear that Respondent was working with Complainant to finalize an offer. Once Respondent realized Complainant's religious beliefs prevented her from seeking her own replacements for scheduled weekend shifts during the summer months, it rescinded its offer.
- 14) It is found that CMMC violated the MHRA when it discriminated against Complainant based on religion by refusing to hire her.

**V. Recommendation:**

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

- 1) There are **Reasonable Grounds** to believe that Central Maine Medical Center discriminated against Helen Crabtree based upon her religion when it denied her reasonable accommodation request, and that portion of the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3);
- 2) There are **Reasonable Grounds** to believe that Central Maine Medical Center discriminated against Helen Crabtree based upon her religion when it failed to hire her, and that portion of the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3); and
- 3) There are **No Reasonable Grounds** to believe that Maine College of Health Professionals discriminated against Helen Crabtree based upon her religion when it denied her reasonable accommodation request and/or failed to hire her, and that portion of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).

  
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Amy M. Sneirson, Executive Director

  
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Alice A. Neal, Chief Investigator