



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: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

E16-0267

March 2, 2017

Tasha Patneau (Roxbury)

v.

Andover General Store (Andover)

I. Summary of Case:

Complainant worked for Respondent as a Kitchen Manager from August of 2015 until March 28, 2016. Complainant alleged that Respondent discriminated against her on the basis of sex and disability by demoting her and cutting her hours. Respondent, a general store, did not deny discrimination. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the Complainant and consideration of Respondent's determination not to submit any defense. Based on this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondent discriminated Complainant in this case.¹

II. Jurisdictional Data:

- 1) Date of alleged discrimination: March 28, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): May 23, 2016.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and state employment regulations.
- 4) The parties are not represented by counsel in this case.

IV. Development of Facts:

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

On March 28, 2016 Respondent demoted her from Kitchen Manager, gave her position to a male Employee, cut her pay by \$2/hour and reduced her hours from 40 to 22 per week. Her boss told her that she was demoted and her hours were cut due to health conditions that were preventing her from doing her job, and due to the fact that she had a family. Her boss told her that the new Kitchen Manager would be better for the position because he is a single male with no responsibilities. She believes Respondent discriminated against her based on sex and actual or perceived disability.

¹ The Commission sent notices of the complaint to Respondent's business address and to its registered agent. The Commission's mailings to Respondent were not returned to the Commission and therefore were deemed received.

2) The Investigator made the following Findings of Fact:

Respondent did not submit information or participate in the investigation or refute Complainant's allegations. Complainant's allegations, submitted under oath, are therefore assumed to be true.

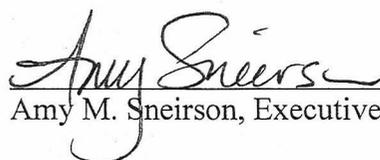
V. Analysis:

- 1) The MHRA requires the Commission 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 this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes it unlawful for an employer to discharge or otherwise discriminate against an employee on the basis of sex and physical or mental disability with respect to the terms, conditions, or privileges of employment. 5 M.R.S. § 4572(1)(A).
- 3) Respondent made statements that it was demoting Complainant because of her sex and her disability. A mixed-motive analysis applies in cases involving "direct evidence" of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6. "Direct evidence" consists of "explicit statements by an employer that unambiguously demonstrate the employer's unlawful discrimination. . . ." *Id.* Where this evidence exists, Complainant "need prove only that the discriminatory action was a motivating factor in an adverse employment decision." *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002); *Doyle*, 2003 ME 61, ¶ 14, n.6, 824 A.2d at 54, n.6.²
- 4) Here, Complainant provided Respondent's statement that her demotion was due to her disability and her gender – Respondent wanted a healthy single male with no responsibilities in the management position. Respondent did not participate in the investigation, and provided nothing to show that it would have demoted Complainant in the absence of the discriminatory factors.
- 5) Sex and disability discrimination was found.

VI. Recommendations:

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

There are **Reasonable Grounds** to believe that Andover General Store discriminated against Tasha Patneau on the basis of sex and disability in the terms and conditions of her employment, and conciliation on these claims should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Angela Tizon, Investigator

² The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court's decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with "direct evidence" of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the Maine Human Rights Act, however, and the guidance from the Maine Supreme Court in *Doyle* will continue to be followed.