

MEMO

TO: Kit Thomson Crossman, Executive Director

FROM: Barbara Archer Hirsch, Commission Counsel
Colin R. Hurd, Deputy Commission Counsel

DATE: July 23, 2025

RE: Standard of review for right-to-sue requests made before 180 days have passed

As you are aware, 5 M.R.S. § 4612(6)(B), enacted in 2023, delineates the circumstances in which the Executive Director (“ED”) shall issue a right-to-sue letter (“RTS”) to a complainant who requests one before their complaint has aged 180 days with the Commission. Prior to the 2023 enactment, complainants could never request an RTS prior to 180 days. Now, the Commission “shall” issue an early RTS when two elements are concurrently met. First, the ED must determine that the complainant demonstrated good cause for requesting the RTS before the passage of 180 days, and second, the ED must certify that it is probable that the Commission will be unable to conclude its investigation before the 180th day from the date on which the complaint was filed. After 180 days have passed, the complainant may request and receive an RTS without having to meet these standards.

The second element of § 4612(6)(B) is relatively straightforward. The first element, however, is more nuanced. The Maine Human Rights Act does not define “good cause”. The Commission’s Procedural Rule provides that the Commission may grant extensions of certain time limits “for good cause shown”, 94-348 C.M.R. Ch. 2, § 2.11(C), but also do not define the term. In practice, the Commission requires that parties seeking extensions demonstrate that the requested extension is necessary due to extenuating circumstances, such as serious personal illness or a death in the family; inconvenience is insufficient to meet this standard.

Looking to other sources, “good cause” appears in several of the Maine Rules of Civil Procedure (“M.R. Civ. P.” or the “Rules”), including M.R. Civ. P. 6 (regarding the extension or shortening of deadlines), M.R. Civ. P. 55(c) (when setting aside default), M.R. Civ. P. 65(c) (when waiving bond for preliminary injunctions), and M.R. Civ. P. 41(b)(1) (when courts may dismiss an action for want of prosecution). There is nonetheless no fixed meaning for the term; as the Maine Supreme Judicial Court, sitting as the Law Court (“SJC”) has explained, “[g]ood cause’ is a highly relative concept [which] lacks fixed and definite meaning, and the application of it requires the court to evaluate the circumstances of each individual case and then to make its determination by exercising a sound discretion.” *W. Point-Pepperell v. State Tax Assessor*, 1997 ME 58, ¶ 7, 691 A.2d 1211. *See also Richter v. Ercolini*, 2010 ME 38, ¶ 15, 994 A.2d 404 (good cause to lift default required “good excuse” and existence of meritorious defense); *Beaucage v. City of Rockland*, 2000 ME 184, ¶ 6, 760 A.2d 1054. The SJC has also explained that “good cause” can include mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, a void judgment, a satisfied judgment, or any other justifying reason. *W. Point-Pepperell v. State Tax Assessor*, 1997 ME 58, ¶ 7. Ultimately, “good cause” exists when “[t]he pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances *compel* the decision”. *Toothaker v. Maine Employment Security Commission*, 217 A.2d 203, 207 (Me. 1966) (quoting *Krauss v. A & M Karagheusian, Inc.*, 13 N.J. 447, 100 A.2d 277, 281 (1953)).

The SJC cases discussing “good cause” focus on situations where a party was either unaware of or reasonably prevented from meeting the Rules’ procedural requirements. They all suggest that “good cause” arises when some exceptional circumstance prevents or hinders a party from following standard procedures. Following this broader principle, the ED’s evaluation of

requests should be fact-specific and dependent upon the individual circumstances of every complaint.

Turning to the specific application of the “good cause” standard to requests for early requests for RTS, the ED should continue to focus on the specific facts surrounding each particular request, and grant only those which involve unexpected or unavoidable occurrences which would make waiting 180 days before obtaining an RTS a hardship. Examples of such occurrences may include: a serious medical condition which limits complainant’s time in which to pursue their claims; pending actions that would undermine complainant’s rights (bankruptcy/dissolving a corporate respondent, changes to applicable laws); threats of physical or other harm to complainant; pending loss of public benefits; and the need for equitable relief that will be unavailable after 180 days. Note that in each of these cases, the complainant may suffer some sort of irreparable harm if they are not permitted to move their case forward sooner than usual; mere convenience or some minor difficulty will almost never amount to good cause.

In addition to the specific facts of a case, general factors to consider should include: whether the parties are represented by counsel; the prejudice (if any) to complainant of waiting until 180 days have passed; the prejudice (if any) to respondent of ending the Commission process early; and whether the Commission has a special interest in the subject matter and may want to litigate it.

Ultimately, it is the complainant’s burden to show that circumstances outside their control will work an injustice if the Commission’s administrative procedures are not abrogated. If they do not do so, the standard 180-day wait period for an RTS should apply.