

# STATE OF MAINE

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To Patricia E. Ryan, Executive Director

Dept. MHRG

From John E. Carnes, Legal Advisor

Dept. MHRG

Subject Establishing standards to be used when applying the [REDACTED] time period for filing complaints as set forth in 5 M.R.S.A. §4611.

As you know, neither the Maine Supreme Judicial Court (with respect to the Maine Human Rights Act) nor the U.S. Supreme Court (with respect to Title VII) has decided the issue of whether the statutory time limitation [REDACTED] for filing complaints is jurisdictional (i.e., an absolute bar) or in the nature of a statute of limitations (i.e., subject to equitable tolling). The lower federal courts are divided on the issue. Until the Maine courts or the U.S. Supreme Court decides the issue, it is recommended that the MHRG proceed on the basis of allowing equitable considerations to be taken into account when applying the statutory limitation period to persons who wish to file complaints with the agency.

If this recommendation is accepted, the standard to be applied should be as follows: the [REDACTED] limitation period begins to run on the date the charging party knew or had reason to know of the discriminatory act. In other words, the statute does not begin to run until the facts which would support a complaint of discrimination are apparent or should be apparent to a person with a "reasonably prudent regard for his [or her] rights." Reeb v. Economic Opportunity Atlanta, 11 FEP Cases 235 (CA 5, 1975).

It should be noted that the standard does not involve a question of when the person attempting to file became aware of his or her legal rights, but rather, when he or she became aware of the "act" of the employer which was allegedly discriminatory. If the answer to this question is that the charging party became knowledgeable at some time after the "act", an inquiry should be made into whether or not the time it took for the person to become aware of the employer's "act" was reasonable. If the lack of awareness was "reasonable" then the [REDACTED] limitation period did not begin to run until the time the charging party actually knew of the action taken against him or her.

It should be kept in mind that the basic underlying question is: did the person attempting to file "sleep" on his or her rights or did he or she comply with the intent of the Maine Human Rights Act and proceed in a diligent and expeditious manner? If the person acted diligently, he or she should not have his or her rights cut off merely because of a failure to meet technical procedural rules. This is so because of the liberal construction which is to be given to remedial legislation such as the Maine Human Rights Act. Reeb v. Economic Opportunity Atlanta, supra, at 238.

In attempting to determine whether a case warrants equitable tolling, the following factors are to be considered:

1. Did the employer mislead the employee in a way which resulted in a failure to file a charge in a timely fashion? An example would be where an employer tells a female employee that her position is being eliminated for lack of funds when, in fact, she is to be replaced by a male. If the woman discovers the truth only several months later and a reasonably prudent person would not have discovered it sooner, then the statute of limitations does not begin to run until that time.

It is also the case that, if the Respondent has actively sought to mislead the Complainant, that in itself, could be an act of discrimination and the time period would begin to run from the moment Complainant knew or had reason to know of the effort to mislead.

On the other hand, if the employee is aware of the allegedly discriminatory act, the employee's uncertainty over possible rehiring or other corrective steps hinted at by the employer does not prevent the [REDACTED] period from running. Coke v. General Adjustment Bureau, 22 FEP Cases 1352 (CA 5, 1979).

2. Did an attorney mislead the person attempting to file? Erroneous or deficient information provided by an attorney who was contacted within a reasonable time after the discriminatory act, might toll the statute in an appropriate case if it appears that the charging party took all reasonable steps to exercise his or her rights. However, a claim by a person attempting to file that, although he or she was aware of a discriminatory act, he or she was ignorant of the rights provided by the Maine Human Rights Act until more than 6 months after the act, would be insufficient to justify tolling of the limitation period. "Ignorance of...legal rights, or failure to seek legal advice [does] not toll the statute of limitations." [Discussion of ADEA 180-day limitation period in Quina v. Owens - Corning Fiberglass Corp., 17 FEP Cases 1108, 1109 (CA 5, 1978)].
3. Did a representative of the Maine Human Rights Commission fail to notify a person attempting to file that a [REDACTED] limitation period existed which resulted in an untimely charge being filed? Did a Maine Human Rights Commission representative give such person misleading information concerning his or her rights which resulted in a late filing? If such mistakes occur, surely the person who has taken all reasonable steps to exercise his or her rights should not bear the burden of the Commission's error or omission. The Commission's policy should be that the statute is tolled for a reasonable period following the issuance of the erroneous or deficient information. See: Dartt v. Shell Oil Co., 13 FEP Cases 12 (CA 10, 1976), affirmed 16 FEP Cases 146 (U.S. Sup. Ct., 1977).
4. Did the person attempting to file take some action within the period of limitations which can legitimately be characterized as meeting the filing requirements of the Act?

While the Maine Human Rights Act, the Maine Human Rights Commission's Procedural Rules, and EEOC regulations state that a charge is to be in writing, signed and sworn to under oath [see 5 M.R.S.A. §4611, MHRC Procedural Rules §2.02 (E), and 29 C.R.F. §1601.8], EEOC regulations also state that, notwithstanding the technical requirements mentioned above, "a charge is deemed filed when the Commission receives from the person making a charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments alleging additional acts which constitute unlawful employment practices directly related to or growing out of the subject matter of the original charge

will relate back to the original filing date" 29 C.F.R. §1601.11(b).

Since federal law interpreting the Civil Rights Act of 1964 is to be relied on when interpreting provisions of the MHRA, the Maine Commission might wish to follow a policy which is in harmony with EEOC's regulation.

For example, if an aggrieved person writes a letter to the Commission which is received before the expiration of the [redacted] period, the Commission may wish to follow a policy of considering such a letter to be a validly filed charge if it is "sufficiently precise to identify the parties and to describe generally the action or practices complained of..." If a MHRC complaint form is subsequently filled out, signed and notarized after the [redacted] limitation period, that form would be considered an amendment of the original charge. The amendment is a valid means of rectifying any technical defects in the original letter.

In Weeks v. Southern Bell Telephone & Telegraph Co., 1 FEP Cases 656 (CA5, 1969), a woman filed a timely unsworn charge alleging sex discrimination. After the time limitation for filing a charge had expired, she amended her complaint by verifying it under oath. When asked to decide if the EEOC procedure was in violation of Title VII which calls for a charge under oath, the court ruled that the verification under oath of the charge after the time limitation had past was consistent with the purpose of the verification requirement which is to protect employers from unfounded charges and harassments.

- 5. If the [redacted] limitation period has started to run because the charging party knew or had reason to know of the discriminatory action, are there facts existing which require that the statute be tolled? For example, courts have held that the statute of limitations in Title VII is tolled during the life of a grievance proceeding initiated pursuant to a labor contract. See: Culpepper v. Reynolds Metals Co., 2 FEP Cases 506 (CA 5, 1970).

No.  
 See:  
 Delaware State  
 College v. Ricks  
 U.S. Sup. Ct.  
 24 FEP Cases 827  
 (Dec. 1980)  
 also: International  
 Union of Electrical  
 Workers v. Robbins  
 & Myers, Inc.  
 429 U.S. 229 (1976)

If the Commission follows this line of cases, its representative should determine if the sum of the days between the occurrence of the alleged unlawful act and the commencement of the contractual grievance proceedings, plus the days between the termination of the grievance proceeding and the filing of a MHRC charge, is less than the [redacted] filing time limitation. If the sum is less than [redacted] days, the charge should be considered timely filed.

- 6. Is the alleged violation of a "continuing" nature? Does there exist a employment practice or a pattern of action by the employer, that is discriminatory or that perpetuates the effects of past discrimination? If so, the [redacted]-day time limit is never a bar to the filing of a charge. Examples of such "continuing" violations would be: having a practice or pattern of restricting minorities or females to low-level departments which limits their promotion opportunities; following a practice of denying women the opportunity to take tests for promotion; maintaining different wage scales based on race, sex, etc.; and following a policy requiring employees to retire at different ages based on their sex. See: Larson, Employment Discrimination, Vol. 2, §48.54.

If an individual who has been the victim of such a "continuing" violation alleges in the charge that there exists a pattern or practice of discrimination, against a protected class, his or her charge form is valid for purposes of triggering a MHRG investigation, even though the specific application of the discriminatory practice occurred more than [REDACTED] before the charge was filed as long as the practices continued up to the time the charge was filed or ceased no more than [REDACTED] days before the charge was filed. See: Jamison v. Olga Coal Co., 4 FEP Cases 532 (DC W Va, 1971).

7. Finally, it should be kept in mind that, if the [REDACTED] limitation period has passed, the burden is on the person attempting to file to persuade the Commission's representative, the Commissioners, and, ultimately, the court, that the statutory limitation period was tolled because of the existence of legitimate equitable considerations for a period of time sufficient to bring the filed charge into compliance with the Act. What the Commission does not want to do, of course, is deny potential complainants the opportunity to state their case before the Commission merely because of a blind adherence to technical rules or for purposes of easy administration and agency convenience, especially in those cases where there is no evidence that Respondent has been prejudiced because of lack of notice or because the claim is "stale" or the charge frivolous.