

# Memo

Date: October 18, 2007  
To: Michele Dion, Investigator  
From: John Gause, Commission Counsel  
Re: [REDACTED]

06-0610

With respect to the timeliness of the charge, I think that the circumstances of this case may justify our equitably tolling the six-month limitations period. You should evaluate the case under the legal standards below before we decide whether the case should be dismissed as untimely.

As you know, the MHRA provides, in relevant part, that victims of unlawful discrimination “may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, provided that such complaints must be filed with the commission not more than 6 months after the alleged act of unlawful discrimination.” 5 M.R.S.A. § 4611. Our Procedural Rule provides, similarly, that “[a] complaint of discrimination must be filed with the Commission not more than six (6) months after the act of alleged discrimination occurred.” Procedural Rule § 2.02(C). The Procedural Rule also provides that “[t]he Executive Director, or the Commission, may extend any time limit provided in this part for good cause shown, and shall notify the parties of any such extension.” Procedural Rule § 2.11(C).

Because the Law Court has not yet addressed this issue of timeliness, we should look to federal law for guidance. Title VII provides that an EEOC charge of discrimination “shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred. . . .” 42 U.S.C. § 2000e-5(e)(1). The Supreme Court has interpreted this provision as being a statute of limitations that “is subject to waiver, estoppel, and equitable tolling.” *Zipes v. TWA*, 455 U.S. 385, 393 (1982). The EEOC applies this standard in its EEOC Compliance Manual. See EEOC Compliance Manual § 2-IV(D). We should interpret § 4611 in the same fashion, namely, as a statute of limitations that can be avoided through waiver, estoppel, or equitable tolling. Other statutes of limitations have been so interpreted in Maine. See *Pino v. Maplewood Packing Co.*, 375 A.2d 534, 538-539 (Me. 1977) (applying waiver and estoppel to workers’ compensation statute of limitations); *Dasha by Dasha v. Maine Med. Ctr.*, 665 A.2d 993, 996 n. 2 (Me. 1995) (noting the existence of the equitable tolling doctrine).

The EEOC Compliance Manual states that equitable tolling applies where “the charging party was understandably unaware of the EEO process or of important facts that should have led him or her to suspect discrimination.” EEOC Compliance Manual § 2-IV(D)(1). The Manual recognizes circumstances beyond Respondent’s control that give rise to equitable estoppel, including 1) Complainant’s excusable ignorance of sufficient information to support a reasonable inference of

discrimination, and the filing period starts to run when Complainant has such information; 2) Complainant's mental state prevented Complainant from pursuing her legal remedies; 3) the EEOC or FEPA gave misleading statements to Complainant or mishandled the charge; 4) Complainant filed in the wrong forum, as long as Complainant was diligently attempting to assert her rights. *See* EEOC Compliance Manual § 2-IV(D)(1)(a-d). *Accord* Larson, Labor and Employment Law § 72.06(1-8).

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Here, from the charge, it appears that Complainant was unaware of any discrimination until the second child (who is not African American) was subjected to what she perceived to be unequal discipline in September 2006. You should evaluate when Complainant became aware of "important facts that should have led him or her to suspect discrimination." EEOC Compliance Manual § 2-IV(D)(1). That date should be used to start the clock on the six-month limitations period.

Cc: Patricia E. Ryan