

Memo

Date: January 20, 2009

To: Patricia E. Ryan, Executive Director

From: John P. Gause, Commission Counsel

Re: E07-0729, [REDACTED]

Based on Complainant's most recent submission, dated January 6, 2009 (Barb did not have this when she made her recommendation), I think that the "hostile work environment" aspect to this case should not be administratively dismissed as untimely.

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).

Although the Law Court has not yet decided the issue, the United States Supreme Court has held that there are two different approaches to calculating the deadlines for filing discrimination claims under Title VII. In cases involving "discrete acts" of discrimination, in which each incident constitutes a separate actionable wrong (e.g., termination, demotion, failure to transfer), the filing period runs from the date of the discrete act. *AMTRAK v. Morgan*, 536 U.S. 101, 105 (2002). See also *LePage v. Bath Iron Works Corp.*, 2006 ME 130, ¶ 12 (citing *Morgan* favorably). In "hostile work environment" claims, which are often based on the culmination of several acts over time, the limitations period for the entire hostile environment runs from the most recent incident that contributes to the hostile environment. *Id.*

This case involves allegations of both a discrete act of unlawful discrimination (Complainant's termination) and a hostile work environment based on sex. Complainant filed her complaint with the Commission within [REDACTED] months of the date of her termination but more than [REDACTED] following the other alleged conduct that forms part of her hostile work environment claim. The issue is whether the incidents that took place on the date of her termination, including the termination itself, can be part of the alleged hostile work environment such that the otherwise untimely parts of the hostile work environment claim are timely. I think the answer is yes.

In her most recent submission, Complainant alleges that her supervisor, [REDACTED] was one of those who sexually harassed her prior to her termination day. On her termination day, Complainant alleges that she sat, upset, shaking, and uncomfortable, with [REDACTED] in a small room for ½ hour and that [REDACTED] ridiculed her for an alleged violation of company policy. She

alleges that [REDACTED] conducted the termination in this manner in order to humiliate her. Thus, she has alleged that [REDACTED]'s conduct on her termination day was part of the hostile work environment. *See* EEOC Compliance Manual § 2(IV)(C)(1)(b) (“An incident may be part of a hostile work environment even if it is also a discrete act. However, a discrete act of discrimination may be part of a hostile work environment only if it is related to abusive conduct or language, i.e., a pattern of discriminatory intimidation, ridicule, and insult.”). *But see Hunter v. Green*, 2008 WL 1925065, *6 (E.D.Mich. 2008) (holding that discrete acts cannot be part of a hostile work environment).

Because Complainant alleges that her termination constituted a part of the hostile work environment, and because the complaint was filed within [REDACTED] of the termination, the hostile work environment claim should not be administratively dismissed as untimely.

Cc: Barbara Lelli, Chief Investigator