



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

E14-0044

March 26, 2015

[REDACTED]

v.

[REDACTED]

### **I. Complainant's Complaint:**

Complainant [REDACTED] alleged that Respondent [REDACTED] [REDACTED] (hereinafter "LaFleur's") violated the Maine Human Rights Act ("MHRA") by discriminating against her on the basis of her sex (pregnancy) by terminating her employment.

### **II. Respondent's Answer:**

Respondent denies discrimination, and asserts that it terminated Complainant's employment after she demonstrated that she failed to truly understand the job and called out frequently, often with little notice.

### **III. Jurisdictional Data:**

- 1) Date of alleged discrimination: June 21, 2013.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): January 31, 2014.
- 3) Respondent employs approximately 20 employees and is subject to the MHRA, Title VII of the Civil Rights Act, as amended, and the Pregnancy Discrimination Act, as well as state and federal employment regulations.
- 4) Complainant is represented by [REDACTED] Respondent is not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference ("IRC"). This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

**IV. Development of Facts and Issues:**

- 1) The parties and issues in this case are as follows:
  - a) Complainant worked for ██████ as both a hostess and a waitress.
  - b) ██████ is a small family ██████ in Jay.
- 2) Ms. ██████ provides the following in support of her position:
  - a) Ms. ██████ began to work for ██████ as both a hostess and waitress in March 2013. She worked the lunch shift Monday through Friday, as well as the Friday dinner shift.
  - b) She performed her job in a satisfactory manner at all times and received positive feedback.
  - c) Ms. ██████ took a home pregnancy test in mid-June, which was positive. On June 20<sup>th</sup>,<sup>1</sup> she called to schedule an appointment with her health care provider, and got an appointment for later that day. She was scheduled to work the lunch shift, so she telephoned her supervisor several hours before the start of her shift to explain that she would not be able to work her shift. She told supervisor that her home pregnancy test had been positive. Supervisor responded that it was fine and that Ms. ██████ should go ahead with the doctor's appointment. Lab tests confirmed that she was pregnant.
  - d) Ms. ██████ worked her Friday shift without incident, and discussed her pregnancy with a coworker during her shift. That day, while picking up her paycheck, she encountered the owner of ██████ ("Owner"). He told her that her employment was terminated. Owner said "[t]his isn't going to work," because the busy season was coming and the restaurant needed "someone who will be here and not miss work for appointments". He then said, "Best of luck to you, and best of luck to your baby."
  - e) Before June 20, 2013, Ms. ██████ had not been absent for appointments. She had one prior absence for illness unrelated to her pregnancy a number of weeks earlier, which had been approved by Owner. She had not received warnings or negative feedback about her attendance or her performance.
  - f) Ms. ██████ alleged that other, non-pregnant employees of the restaurant have called out from time to time due to illness or doctors' appointments and have not been discharged.
- 3) ██████ provided the following in response to Ms. ██████ allegations:
  - a) ██████ employment was terminated for two reasons. First, she called out five or six times on scheduled work days. Her frequent absences, which usually happened on Mondays, constituted an unreliable work ethic and made her an unreliable employee. The second reason was that, due to her lack of experience, she failed to truly understand her responsibilities in the

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<sup>1</sup> Complainant initially thought her appointment was on June 19<sup>th</sup>, but her medical records confirm that it was on June 20<sup>th</sup>.

INVESTIGATOR'S REPORT E14-0044

workplace. Owner shared these reasons with Ms. [REDACTED] when her employment was terminated.

- b) Ms. [REDACTED] told Owner about her pregnancy.
  - c) Owner explained that after 35 years in business, he does not keep personnel files on his employees. He recalled one waitress in the past 10 years who was pregnant and worked until the beginning of her 8<sup>th</sup> month. He stated that they had a conversation approximately six weeks prior to her maternity leave, during which she told Owner that she felt comfortable working, but that she would let him know if that changed. Six weeks later, she told Owner that she thought it would be in the best interest of both her baby and herself if she was taken off the schedule. He also recalled that prior to that he had a pregnant employee who worked until her water broke.
- 4) Witness statements were provided by two members of [REDACTED] staff:
- a) The Dining Room Supervisor wrote a statement the day before the IRC in this matter, saying that Ms. [REDACTED] seemed to struggle with the tasks required for her job even after weeks of work, and that she called in sick five or six times with very little notice (sometimes as little as an hour). Dining Room Supervisor discussed the issue with Owner, and they decided that it was best to terminate Ms. [REDACTED] employment because she was unreliable.
  - b) A coworker wrote a statement on the day of the IRC, stating that Ms. [REDACTED] called out frequently on days she was scheduled to work, without providing much notice. This left little time to find an alternate to cover her shift.
- 5) Additional investigation reveals:
- a) Shortly after her termination from employment and prior to filing her charge with the Commission, Ms. [REDACTED] made repeated written requests for her personnel file and for a written statement of the reason for her discharge. Pursuant to Maine law, [REDACTED] was required to provide a copy of the personnel file within 10 days, and the written statement within 15 days. [REDACTED] has never provided this information.
  - b) There is apparently no personnel file. During her employment, Complainant received no warnings, counselings or other discipline. There is also no record of Complainant's alleged 5 absences, which she denies occurred.

**V. Analysis:**

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA provides, in part, that it is unlawful employment discrimination to discharge an

INVESTIGATOR'S REPORT E14-0044

employee because of their sex. 5 M.R.S. § 4572(1)(A). The term "sex" includes "pregnancy and medical conditions which result from pregnancy". 5 M.R.S. § 4572-A(1).

- 3) Here, Complainant alleged that she her employment was terminated because of her pregnancy. Respondent denied discrimination, and stated that Complainant was not reliable because of her excessive absences and that she didn't understand her job and her responsibilities in that workplace.
- 4) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 5) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that: (1) she belonged to a protected class, (2) she performed her job satisfactorily, (3) her employer took an adverse employment decision against her, and (4) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed. See *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1<sup>st</sup> Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1<sup>st</sup> Cir. 1990); cf. *City of Auburn*, 408 A.2d at 1261.
- 6) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. See *Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. See *id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. See *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68.
- 7) Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 8) In order to prevail, Complainant must show that she would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. See *City of Auburn*, 408 A.2d at 1268.
- 9) Complainant has established a prima-facie case of discrimination based on sex (pregnancy). She was a member of a protected class, she performed her job satisfactorily, and her employment was terminated immediately after Respondent learned of her pregnancy, giving rise to an inference of discrimination.
- 10) Respondent has provided nondiscriminatory reasons for terminating Complainant's employment: Complainant was unreliable, in that she called out frequently, sometimes at the last minute, and

INVESTIGATOR'S REPORT E14-0044

Complainant's lack of experience meant that she did not truly understand what her responsibilities were in the workplace.

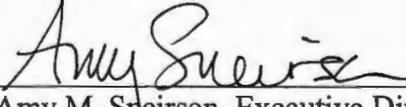
- 11) In the final analysis, Complainant has been able to demonstrate that these reasons are false, and that the real reason for the adverse action taken against her was her pregnancy, with reasoning as follows:
- a. Respondent did not provide documentation of any of the issues that it claims led to Complainant's termination. There was no personnel file. There was no indication that Ms. [REDACTED] had been disciplined, written up, or warned about her supposed poor performance. There were also no records of her alleged repeated absences: Respondent did not produce calendars, time sheets, or any other evidence to support its claims. It also refused to provide a written reason for Complainant's discharge, as required by Maine's employment statutes, which suggests that it did not have a reason that was acceptable.
  - b. The statements provided by Respondent are not considered credible. The statements were plainly written solely for the purpose of this investigation, no more than a day before the IRC took place. They are unsworn, and from current employees of Respondent. Under the circumstances, they provide little support for Respondent's position.
  - c. Complainant learned that she was pregnant, told her supervisor and Owner, missed a single shift to see her doctor, and was discharged within two days of the appointment. While telling Complainant she was being discharged, Owner wished her luck with her baby. The timing and circumstances of this conversation strongly suggest that Complainant was discharged because of her pregnancy.
  - d. There is nothing in the record to suggest that any intervening event prompted Complainant's discharge, or that she was considered an unsatisfactory employee before she told Respondent of her pregnancy. The facts of this case compel the conclusion that Complainant was discharged because Respondent did not want to deal with her pregnancy.

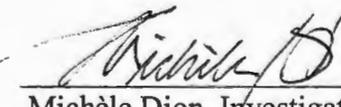
15) Discrimination on the basis of sex (pregnancy) is found.

**VI. RECOMMENDATION:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] Restaurant discriminated against Complainant [REDACTED] [REDACTED] on the basis of her sex (pregnancy); and
- 2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneider, Executive Director

  
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Michèle Dion, Investigator