



# Maine Human Rights Commission

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**INVESTIGATOR'S REPORT**  
**MHRC Case Number: E14-0598**  
October 20 2016

**Wanda E. Lagasse (Portland)**

v.

**Giroux Oil Co. Inc., dba GirouxEnergy Solutions<sup>1</sup> (Portland)**

**Summary of Case:**

Complainant Wanda E. Lagasse worked for Respondent Giroux Oil Co. Inc., dba GirouxEnergy Solutions as a Customer Service Associate from about February 1987 until July 2014. Complainant alleged that Respondent discriminated against her based on her disabilities when it denied her a reasonable accommodation and later discharged her from her employment. Respondent, an oil delivery business, denied discriminating against Complainant based on her disability, and stated that Complainant elected to retire early. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondent discriminated against Complainant based on her protected class status.

**Jurisdictional Data:**

- 1) Dates of alleged discrimination: July 8, 2014 through July 23, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 31, 2014.
- 3) Respondent is believed to have at least 15 employees and is subject to the Maine Human Rights Act ("MHRA"), Americans with Disabilities Act ("ADA"), as well as state and federal employment regulations.
- 4) Complainant is represented by Kristin Aiello, Esq. Respondent is represented by Joanne Pearson, Esq.

**IV. Development of Facts:**

- 1) Complainant provided the following in support of her claims:

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<sup>1</sup> Complainant's complaint listed Respondent's name as Giroux Oil Co. Inc., dba GirouxEnergy Solutions. Respondent provided that its legal name is "Giroux Oil Company, Inc." Because Complainant has not amended her complaint to use Respondent's legal name, the name used by Complainant has been retained.

Complainant is disabled.<sup>2</sup> Respondent was aware of Complainant's disabilities. She performed her job satisfactorily. Respondent changed the internal office configuration, changing Complainant's workspace to be a small, enclosed cubicle. Because of her disability, Complainant could not work in her unit after the redesign and asked for an accommodation (removal of a wall of the cubicle); she also proposed several alternative accommodations. Respondent did not grant the accommodation requests and discharged Complainant from her employment.

2) Respondent provided the following in support of its position:

Respondent spent over \$20,000 to renovate its offices, creating cubicles for its employees so they had more private space to perform their job duties. Complainant was aware of the office redesign. When she arrived to work after the redesign occurred, she was unhappy with the layout. Complainant said that with her disabilities she was not able to work in the small space. Respondent was able to make small changes to the space, but did not know what to do given the office set-up. Complainant chose to retire early and receive unemployment benefits.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) Complainant is disabled. Complainant informed Respondent about her disabilities.<sup>3</sup>
- b) Complainant was a long-time employee who was supervised by the general manager ("GM"). Complainant planned to retire in early 2015.
- c) In late June and early July 2014, Respondent renovated its offices to improve workplace performance. The prior open concept caused distraction for employees.
- d) On July 8, 2014, Complainant arrived at work after the renovation and saw her new workstation. The workspace was drastically reduced and closed in on all sides. Complainant began shaking and could not enter the cubicle. Complainant went into the bathroom and cried for 20 minutes to calm herself down, but was unable to do so based on her disabilities. GM told Complainant that if she could not work, she should go home for the day. She went to her car and cried for 45 minutes before driving home.
  - i. GM expected that Complainant would return the next day, ready to work. This did not happen.
- e) On about July 9, 2014, GM and Complainant met in the afternoon with one of the owners ("Owner 1") present. Complainant told Respondent again that she had [REDACTED], was [REDACTED], and had a [REDACTED] [REDACTED] when trying to enter her cubicle. Complainant asked GM if one of the walls from her cubicle

<sup>2</sup> Complainant suffers from [REDACTED] [REDACTED] [REDACTED] [REDACTED]. At least one of Complainant's disabilities, [REDACTED] [REDACTED] [REDACTED], is a *per se* disability as defined under the MHRA (a disability without regard to severity).

<sup>3</sup> Respondent alleged that it did not know of Complainant's disabilities, yet acknowledged that Complainant was out not infrequently for emotional reasons. In Respondent's Answer, it notes that "it has become commonplace for [Complainant's] co-workers to see her leave the office in tears and either take a long break or just leave for the day. Her reactions were unpredictable and could result from any number of personal issues or something work related." In addition, on July 8, 2016 Complainant told Respondent that she was [REDACTED] and that she could not work in the new space. Complainant later provided Respondent with a medical note that her workspace needed to be changed.

could be removed. GM said no. Complainant asked if she could move her workspace to a conference room and there was no response. Owner 1 indicated that maybe Complainant should retire early.

- f) On July 9, 2014, a supervisor (“Supervisor”) called Complainant at home and asked her to come in that afternoon to get into her cubicle. Complainant asked Supervisor to take her boxes out of the workspace and asked to have one of the walls removed. Supervisor agreed to both requests. Complainant arrived later that day and her boxes were removed, but the wall remained. Supervisor informed Complainant that GM would not remove the wall. Complainant attempted to enter the cubicle again and could not. She could not work in her new workspace without modifications.
- g) Complainant sought medical treatment and Respondent was aware of the medical appointments.
- h) On July 15, 2014, Complainant met with medical providers at her primary care physician’s office. Complainant’s [REDACTED] [REDACTED] was reaffirmed and she received a note that said “pt needs work space evaluation due to medical condition. Requires accommodations”. Complainant gave the note to GM, who asked what he was supposed to do with the note. Complainant referred him to the note and told GM that she was seeing a [REDACTED] to work on her issues so that she could return to work. GM did not discuss accommodations with Complainant.
- i) From July 8 through July 23, 2014, Complainant contacted Respondent almost daily with updates and about her need for an accommodation. Complainant asked for modifications to the cubicle or to be assigned to a different space for work, giving several suggestions. Respondent did not agree to any of the requests.
- j) Complainant was forced to use sick time and vacation time while she was out.
- k) On about July 21, 2014, Complainant called GM to tell him about her [REDACTED] recommendations for her to return to work half-days and that she try increasing her medication to deal with [REDACTED]. She requested that her cubicle be altered or that she be moved. GM said he did not want to disrupt the office and if he approved her requests, they would be disruptive. GM also said he did not want Complainant to take drugs because it would slow her down and he needed her at full capacity, suggesting she would not work as effectively if she were on medication. GM asked Complainant to come in to talk because of the vagueness of her note and her undisclosed “medical condition”.
- l) On July 23, 2014, Complainant met with GM and another owner (“Owner 2”). Complainant attempted to bring up her accommodation requests in the meeting. GM did not want to discuss her requests. Owner 2 said Complainant was on a lot of medication and suggested she go on disability. Complainant said she wanted to work, but could not in the cubicle. GM said he would not grant her accommodations and that he did not want her taking more medication at work. GM suggested that Complainant leave voluntarily; Complainant said she could not work under the circumstances. Complainant needed an accommodation and Respondent refused to provide one.
  - i. Complainant arrived alone for the meeting. Complainant’s companion arrived independently and expressed to Owner 2 that Complainant was on a lot of medication and he was concerned about her, describing her as acting zombie-like.
  - ii. Owner 2 became concerned because he hired Complainant and he felt like she was a member of the family. Owner 2 asked to speak to Complainant privately and find out what he could do to

- help. They discussed Complainant's personal issues and options. Owner 2 raised a possible option of retirement. There was a discussion about unemployment.
- iii. Respondent agreed to pay Complainant's life, health, and dental insurance for the rest of 2014 if it would help her to retire.
  - iv. Complainant indicated that she could not go without pay.
  - v. Respondent claimed that it offered accommodations to Complainant that she refused. Complainant left before the options could be explored. Respondent doubted the reasonableness and effectiveness of Complainant's requests. Complainant denied that Respondent suggested that she move to an outside cubicle or work in a coworker's cubicle. Complainant wanted to work and would have tried Respondent's suggestions.

## 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 Maine Revised Statutes ("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.

### Reasonable Accommodation Claim

- 2) Pursuant to the MHRA, it is unlawful to discriminate in employment because of physical or mental disability. See 5 M.R.S. § 4572(2). Unlawful discrimination includes "[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity." 5 M.R.S. §§ 4553(2)(E).
- 3) To establish this claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. See *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that she is a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment. See *id.*
- 4) The term "qualified individual with a disability" means "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S. § 4553(8-D). Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, [and] the provision of qualified readers or interpreters. . . ." 5 M.R.S. § 4553(9-A)
- 5) In proving that an accommodation is "reasonable," Complainant must show "not only that the proposed accommodation would enable her to perform the essential functions of her job, but also that, at least on the face of things, it is feasible for the employer under the circumstances." *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." See *Plourde v. Scott Paper Co.*, 552



A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. 3.08(D)(1) (July 17, 1999). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S. § 4553(9-B).

- 6) Generally, Respondent is only required to provide a reasonable accommodation if Complainant requests one. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d at 261.
- 7) Complainant has shown that Respondent unlawfully denied her a reasonable accommodation.
  - a) Complainant is a qualified individual with a disability. Respondent disputed that Complainant has a disability, but her [REDACTED] [REDACTED] is a disability *per se*. 5 M.R.S. § 4553-A(1)(B). She also showed that she could perform the essential functions of her position, with or without reasonable accommodations.
  - b) The record reflects that after the office renovation Complainant could not work in her newly created cubicle and that she requested a variety of changes based on her disabilities. Complainant provided her doctor's note that she needed an accommodation for her workspace. Respondent did not know what to do for the accommodation and denied Complainant's requests.
  - c) Respondent did not fully engage in the interactive process with Complainant. Complainant and Respondent had multiple conversations about the reasonable accommodation requests. However, the record reflects that Respondent did not discuss alternatives with Complainant, it made decisions based on its own interpretation of Complainant's medical note. It is not necessary to grant Complainant's exact request, yet the record is unclear that Respondent offered any alternatives to Complainant.<sup>4</sup>
  - d) Respondent has not argued that granting Complainant's request would cause an undue hardship, only that if her request was granted it would be disruptive for her coworkers.<sup>5</sup> Respondent was unwilling to attempt any of Complainant's reasonable requests, including removing a wall from her cubicle.
- 8) Complainant established that Respondent denied her a reasonable accommodation for her disability.

#### Termination Claim

- 9) The MHRA provides that it is unlawful to discharge an employee because of physical or mental disability. *See* 5 M.R.S. § 4572(1)(A).
- 10) 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).

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<sup>4</sup> The operative dispute in this case occurred in July 2014. As of that date, the ADA did contain an affirmative, mandatory obligation on employers to engage in the interactive process related to reasonable accommodation requests, but the MHRA did not. The MHRA was amended in 2014 to include a mandatory requirement for employers to engage in an interactive process related to reasonable accommodation requests, but the amendments were not effective until September 24, 2014. Accordingly, Respondent's failure to engage fully in the interactive process cannot lead to liability in this case.

<sup>5</sup> There is no evidence in the record to explain why removing a wall from Complainant's cubicle would have been disruptive, especially in light of the fact that Complainant and three coworkers had worked in an open space without dividers until just a week earlier.

- 11) 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 (1st Cir. 1990); *cf. City of Auburn*, 408 A.2d at 1261.
- 12) 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. 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.
- 13) 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.
- 14) Complainant has established her prima-facie case. She belonged to a protected class, she performed her job satisfactorily, her employment was terminated, and Respondent had a continuing need for the work to be performed.
- 15) Respondent has articulated a legitimate, nondiscriminatory reason for discharging Complainant, namely that Complainant voluntarily retired early.
- 16) At the final stage of the analysis, Complainant has demonstrated that Respondent's reason was false or irrelevant and that unlawful discrimination was the reason for her discharge, with reasoning as follows:
  - a) Respondent argued Complainant voluntarily retired early and that Respondent paid her health, dental, and life benefits through the end of the year. Complainant told Respondent that she had to work and that she needed money. Complainant wanted to work, but could not under the circumstances since Respondent refused to offer an alternative space for Complainant to work or to modify her cubicle.
  - b) Respondent raised concerns about Complainant's ability to work while on her prescribed medication. This tends to show that Respondent regarded Complainant as unable to do her job based on a disability.
  - c) Respondent argued that it treated Complainant as a family member and that it is implausible to think that it forced her to leave. However, the record reflects that Respondent was unwilling to work with Complainant to come up with an accommodation to meet both Complainant and Respondent's needs, making it impossible for Complainant to continue to work. These divergent pictures do not show that Respondent wanted to find a solution. Without a solution, Complainant could not perform her job duties

and Respondent did not assist her in finding a solution. Respondent's own actions created an environment where Complainant could not work, effectively discharging her from her employment.

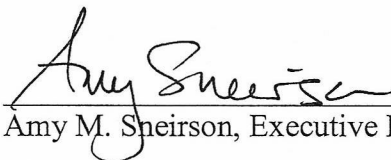
- i. Of particular note, GM's written notes of his discussion with Complainant on July 9<sup>th</sup>, when she was unable to enter her small cubicle, provide: "I told her that we could make minor adjustments but was that really going to solve her internal issues . . . ." Respondent plainly believed that Complainant was causing the problem, and that she needed to be fixed, not the workplace.

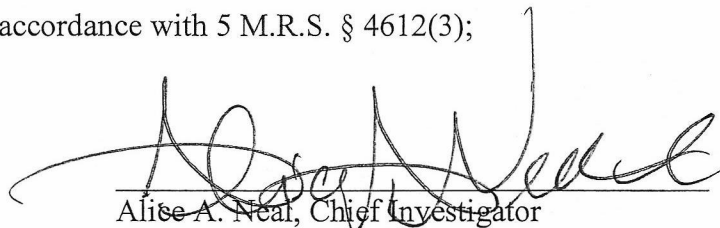
17) Discrimination on the basis of disability is found.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **Reasonable Grounds** to believe that Giroux Oil Co. Inc., dba GirouxEnergy Solutions discriminated against Wanda E. Lagasse on the basis of disability by denying a request for a reasonable accommodation;
2. There are **Reasonable Grounds** to believe that Giroux Oil Co. Inc., dba GirouxEnergy Solutions discriminated against Wanda E. Lagasse on the basis of disability when it terminated her employment; and
3. The complaint should be conciliated in accordance with 5 M.R.S. § 4612(3);

  
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Amy M. Sheirson, Executive Director

  
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Alise A. Neal, Chief Investigator