



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

MHRC No.: E18-0199

December 13, 2019

**Linda J. Gastonquay (Freeport)**

v.

**Amatoes (Freeport)<sup>1</sup>**

### **I. Summary of the Case:**

On May 21, 2018, Complainant filed her Complaint with the Maine Human Rights Commission (“Commission”) alleging that Respondent retaliated against her.<sup>2</sup> Respondent provided no response as part of this investigation.<sup>3</sup>

### **II. Summary of Investigation:**

The Investigator reviewed the following documents as part of the investigation: (i) complaint filed by Complainant on May 21, 2018.

### **IV. Analysis:**

The Maine Human Rights Act (“MHRA”) requires the Commission 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.

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<sup>1</sup> Complainant named Amatoes as the Respondent in her complaint. Respondent’s legal name is Amato’s of Freeport LLC (“Amato’s”). Complainant did not amend her complaint to use the name Respondent provided, so the name she used has been retained.

<sup>2</sup> Complainant also alleged age and disability discrimination but there is no evidence in the record to support these allegations.

<sup>3</sup> Respondent was contacted by mail on May 29, 2018, September 27, 2018, June 7, 2019, September 10, 2019, and October 3, 2019. The owner of Amato’s (“Owner”) submitted a document on July 13, 2018, stating that Amato’s is closed and has no assets.

The MHRA prohibits retaliation against employees who, pursuant to the Maine Whistleblowers' Protection Act ("WPA") make good faith reports of what they reasonably believe to be a violation of law or a condition jeopardizing the health and safety of the employee or others in the workplace. *See* 5 M.R.S. § 4572(1)(A)&(B); 26 M.R.S. § 833(1)(A)&(B). The MHRA also makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the Act] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S. § 4572(1)(E).

In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse action, which may be proven by a "close proximity" between them. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). The prima-facie case for a claim of MHRA retaliation requires, in addition, that the adverse employment action be "material," which means that "the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006).

The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. *See also Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, the Complainant must carry her overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse action." *Id.* Complainant must show that she would not have suffered the adverse action but for her protected activity, although the protected activity need not be the only reason for the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).


Complainant established her claim of retaliation. She made a good-faith report to the owner ("Owner") on April 4, 2018 via email. Complainant alleged harassment and reported that a coworker ("Coworker") was smoking marijuana inside the store. Owner disagreed with Complainant and suggested that she speak with her supervisor ("Supervisor"). Supervisor later texted Complainant and terminated her employment. The discharge message explicitly acknowledged Complainant's report to Owner: "So today I received an email of your complaint to corporate about you not being happy and being harassed at work. Due to my research and overview on performance feedback and teamwork, your position here at Amatos is no longer needed. I believe it is best we part ways. You are no longer employed at Amatos in Freeport."

Due to the close proximity in time between her report and subsequent dismissal, a causal connection has been established. Respondent failed to respond and thus did not produce any probative evidence to demonstrate a nondiscriminatory reason for Complainant's discharge. Absent this showing, Complainant has established her WPA- and MHRA-retaliation claims.

## **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 Amatoes retaliated against Linda Gastonquay for engaging in WPA- or MHRA-protected activity, and these claims should be conciliated in accordance with 5 M.R.S. § 4612(3).
- 2) There are **No Reasonable Grounds** to believe that Amatoes discriminated against Linda Gastonquay on the basis of age or disability, and these claims should be dismissed in accordance with 5 M.R.S. § 4612(2).



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Alexandra R. Brindley, Investigator