



Maine Human Rights Commission  
# 51 State House Station | Augusta ME 04333-0051

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[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

Amy M. Sneirson  
*Executive Director*

John P. Gause  
*Commission Counsel*

# Memo

Date: February 27, 2012  
To: Amy Sneirson, Executive Director  
From: John Gause, Commission Counsel  
Re: E11-0685,

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Respondent argues that this complaint should be administratively dismissed because, although the Complainant filed a signed Intake Questionnaire and faxed a notarized complaint to the Commission within 300 days after the alleged act of unlawful discrimination, he did not file a notarized complaint by mail until after the 300-day deadline. For the following reasons, the complaint should not be administratively dismissed.

A complaint may be administratively dismissed by the Executive Director for failure to file a complaint of discrimination within 300 days of the date of alleged discrimination. *See* 94-348 C.M.R. ch. 2, §2.02(H)(3). Here, Complainant alleges that Respondent terminated his employment because of his age on January 21, 2011. The 300 days to file expired on November 17, 2011. Complainant filed a signed Intake Questionnaire with the Commission on November 14, 2011, alleging that he was terminated because of his age. The Intake Questionnaire gave the Complainant's and Respondent's contact information; stated, "I wish to file a charge against" Respondent; stated that Complainant believed that he was discriminated against in employment because of age; and identified his dismissal as the focus of his unequal treatment. On that day, our Intake Officer spoke with Complainant and obtained additional details relating to his claim. Her notes include the following:

I told Comp. that I would send charge forms to him first thing Tuesday [the next day, November 15<sup>th</sup>]. Suggested that he may want to fax signed and notarized charge forms to this office by Thurs. [November 17<sup>th</sup>] for 300-day s.o.l., although signed intake protects him. He will do so. Reminded him to send original signed/notarized charge forms in the mail.

The next day, on November 15, 2011, our Intake Officer mailed an EEOC Form 5 (our standard complaint form) alleging unlawful termination because of age to Complainant and requested in the cover letter that he have it notarized and return it to the Commission. After hours on November 16<sup>th</sup> Complainant faxed the notarized complaint back to the Commission, and it was docketed as having been received on November 17<sup>th</sup>. The Commission received the notarized complaint by mail on November 18, 2011. Respondent argues that the complaint is untimely because the notarized complaint was not received by mail until after the 300-day deadline.

The MHRA states that “[a]ny person who believes that the person has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, except that a complaint must be filed with the commission not more than 300 days after the alleged act of unlawful discrimination.” 5 M.R.S.A. §4611. In addition, the Commission’s Procedural Rule describe “how to file” a complaint as follows:

Complaints may be filed in person or by mail by filling out a form provided by the Commission or by EEOC or HUD pursuant to work sharing agreements between the Commission and EEOC or HUD. Complaints must be sworn to under oath before a Notary Public or other person authorized by law to administer oaths, or before a representative of the EEOC or HUD pursuant to work sharing agreements signed between the Commission and the EEOC and HUD.

94-348 C.M.R. ch. 2, §2.02(E) (emphasis added). Respondent reads these two provisions to mean that a notarized complaint must be filed with the Commission by mail not more than 300 days after the act of alleged unlawful discrimination.

The Procedural Rule, however, is not meant to be applied so rigidly. *See* 94-348 C.M.R. ch. 2, §2.02(F). The Rule allows “technical defects or omissions” to be cured by later amendment, in which case the date of filing is calculated based on the date the complaint was first received:

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

94-348 C.M.R. ch. 2, §2.02(F). Both the requirement that a complaint be sworn to under oath (as expressly stated in the Rule) and that it be mailed or hand-delivered are the sort of “technical defects or omissions” that we should allow to be cured by later compliance and relate the filing back to the date the complaint was first received. The question

becomes, however, whether the Commission received something within the 300-day window that can properly be considered a “complaint” for purposes of the relation-back rule.

In defining the scope of a “complaint” for this purpose, we should be mindful of the fact that “technical defects or omissions” may be cured. The focus should therefore be on the substantive aspects of the complaint as opposed to technical compliance. The closest our Rule comes to describing the substantive nature of a complaint is the reference to its “contents” as follows: “Contents. A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.” 94-348 C.M.R. ch. 2, §2.02(B). It makes sense for us to use this as our standard for a minimally sufficient complaint. Thus, a complaint will be considered received by us when we receive information from complainant that briefly sets forth the facts and circumstances surrounding the alleged discrimination even if none of the other requirements for a complaint are met. It is unnecessary at this stage that the complaint be in a particular form, that it be under oath, or even that it be in writing.<sup>1</sup> The scope of the required “facts and circumstances” will vary, but most should include identifying information for the parties, a brief description of the unlawful act (e.g., termination, harassment, eviction), and the alleged unlawful basis (e.g., sex, disability). To be a “complaint,” it must also be reasonably construed as a request for the Commission to take remedial action to protect the complainant’s rights or otherwise settle a dispute between the complainant and respondent. *See Federal Exp. Corp. v. Holowecki*, 128 S.Ct. 1147, 1158 (2008) (interpreting federal Age Discrimination in employment Act).<sup>2</sup>

This interpretation is largely consistent with analogous federal filing requirements, although Title VII complaints must be submitted in writing. Under Title VII, a charge with the EEOC is minimally sufficient “when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of.” 29 C.F.R. §1601.12(b).<sup>3</sup> Under the ADEA, an EEOC “charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s). Charges received in person or by telephone shall be reduced to writing.” 29 C.F.R. §1626.6. *See also* 29 C.F.R. §1626.8(b). Under the FHA, a complaint may be filed with the HUD “by

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<sup>1</sup> It is expected that our staff will make a written record of the initial contact. Of course, a notarized complaint in compliance with our Procedural Rule must be filed in order for the Commission to conduct an investigation. *See* 5 M.R.S.A. §4611 (requiring “complaint under oath”); 94-348 C.M.R. ch. 2, §2.03 (“Within 10 days after a complaint has been pre-screened, notarized, filed, and assigned a case number, the party against whom the complaint has been filed, referred to as respondent, will be notified and provided with a copy of the complaint.”) (emphasis added), §2.05(I) (“The Commission must conclude its investigation within 2 years after a notarized complaint is filed with the Commission.”) (emphasis added).

<sup>2</sup> The Supreme Court has interpreted this requirement to mean “the filing must be examined from the standpoint of an objective observer to determine whether, by a reasonable construction of its terms, the filer requests the agency to activate its machinery and remedial processes. . . .” *Id.*

<sup>3</sup> Unlike the MHRA, Title VII itself specifies that a charge filed with the EEOC “shall be in writing. . . .” 42 U.S.C. §2000E-5(e). *Compare* 5 M.R.S.A. §4611.

mail or telephone with any of HUD's Offices of Fair Housing and Equal Opportunity or with any State or local agency that HUD has certified to receive complaints. . . .” 24 C.F.R. §103.30.<sup>4</sup>

Here, again, Complainant filed the Intake Questionnaire with the Commission on November 14, 2011. It gave the parties’ contact information and alleged that Respondent terminated Complainant’s employment because of his age. This was sufficient to “briefly set forth the facts and circumstances surrounding the alleged discrimination.” 94-348 C.M.R. ch. 2, §2.02(B). It also stated, “I wish to file a charge against” Respondent. Although the instructions to the Questionnaire stated that a charge of discrimination would be filed when a signed, notarized complaint form was received, our Intake Officer told Complainant on the telephone that the Questionnaire protected him for purposes of the filing deadline.<sup>5</sup> She also suggested he fax the notarized EEOC Form 5 back to the Commission to be safe. Following these instructions, Complainant faxed the Form 5 back on November 17, 2011. Under these circumstances, an objection observer almost certainly would have construed the Intake Questionnaire and the faxed Form 5 as a request by Complainant that the Commission “activate its machinery and remedial processes.” *Federal Exp. Corp. v. Holowecki*, 128 S.Ct. at 1158 (2008). A minimally sufficient complaint was received by the Commission before the 300-day deadline expired on November 17, 2011, and Complainant’s subsequent compliance with the requirement that he mail a notarized complaint to the Commission cured a technical defect or omission, and the correctly-filed complaint relates back to (at least) November 17, 2011.

Respondent’s request for administrative dismissal should be denied.

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<sup>4</sup> HUD requests that a complainant provide it with:

- (a) Your name, address, and telephone numbers where you can be reached;
- (b) The name and address of the persons, businesses, or organizations you believe discriminated against you;
- (c) If there is a specific property involved, you should provide the property's address and physical description, such as apartment, condominium, house, or vacant lot; and
- (d) A brief description of how you were discriminated against in an activity related to housing. You should include in this description the date when the discrimination happened and why you believe the discrimination occurred because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

24 C.F.R. §103.25.

<sup>5</sup> The instructions that accompany the Questionnaire state, “A CHARGE OF DISCRIMINATION IS FILED WITH THE MAINE HUMAN RIGHTS COMMISSION WHEN A SIGNED, NOTARIZED COMPLAINT FORM IS RECEIVED BY THE COMMISSION. SIGNED, NOTARIZED COMPLAINTS MUST BE RECEIVED BY THE COMMISSION WITHIN THREE HUNDRED (300) DAYS OF THE ALLEGED ACT OF DISCRIMINATION.” Similarly, the form letter that was sent to Complainant with the EEOC Form 5 stated, in part, “A complaint is not considered filed until this office receives the signed and notarized charge forms.” Both of these should be updated.