

STATE OF MAINE

Inter-Departmental Memorandum

Date December 18, 1989

To Paul D. Pierce, Chief Investigator

Dept. MHRC

From John E. Carnes, Commission Counsel

Dept. " J.C.C.

Subject Memo dated 12/11/89, re: [REDACTED]

Question #1: Does Complainant state a claim or have standing to file?

Answer: No. Complainant is alleging, in effect, reverse discrimination. However, "handicap" discrimination cases in which the complainant has no handicap are not analogous to race discrimination cases in which the white employee is saying he is aggrieved because his race is the wrong race and he is, therefore, disadvantaged by an affirmative action plan. These "handicap" cases are analogous to "age" discrimination cases under ADEA in which the complainant's age is outside the protected +40 range. The complainants simply have no protection under the respective statutes until they reach age 40 or until they have a handicap.

In sum, as long as an employee has no handicap, he or she has no standing to claim handicap discrimination even if they are "disadvantaged" by the employer's accommodation of handicapped employees. Even if the employer goes beyond the accommodations required by handicap discrimination statutes, the problem for the non-handicapped employee is a labor/management problem, not a civil rights problem.

Question 2: Is the charge timely?

Answer: The issue is moot since Complainant has no standing. If Complainant had standing the answer would be that any charge filed within six months of the termination of the policy described in the allegations would be timely.

Paul: I note that Mr. [REDACTED] wrote to Pat Ryan. Should the response come from her or from you? Either way, I would suggest that you use the substance of this memo in drafting the response, but not forward a copy of the memo to him. It is a memo from me to you, not from me to Mr. [REDACTED]. Thanks. If you have questions, please don't hesitate to see me.

cm

cc: Patricia E. Ryan, Exec. Director